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PLANNED MERGER BETWEEN TEXACO AND GETTY ON THE EL DORADO REFINERY

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

REVIEW OF THE EFFECT OF THE PLANNED MERGER BETWEEN TEXACO AND GETTY ON THE EL DORADO REFINERY

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PLANNED MERGER BETWEEN TEXACO AND GETTY ON THE EL DORADO REFINERY

MONDAY, MARCH 19, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
El Dorado, Kans.

The committee met, pursuant to notice, at 10 a.m. in the auditorium, Butler County Community Junior College, Hon. Nancy L. Kassebaum presiding.

Staff members assigned to this hearing: Chuck Doyle, staff counsel; and Amy Bondurant, minority staff counsel.

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. The purpose for this slight pause was an introduction that they are doing for the cable coverage of this hearing. It is a pleasure to welcome everyone. Those witnesses who have come from afar, the elected officials and particularly the townspeople and those in the area who are quite concerned about the issue before us today. Coming through the elements to take part in this hearing is something that all of us very much appreciate.

This is an official hearing of the Senate Commerce Committee. Myself and Congressman Whittaker are both members of the Commerce Committee, myself in the Senate and the Congressman in the House. It was too difficult to join the House and Senate in an official hearing, so it is just the Senate official version. But it is a great pleasure to really cochair this with Congressman Whittaker, who I might add has been a most responsible leader in trying to bring to this Texaco/Getty merger and its impact on the refinery here all of the pressure that can be brought to bear. He held a very important meeting in Washington last week.

The purpose of this hearing today is to review the effect of the planned merger between Texaco and Getty on the El Dorado refinery.

I would just like to make a few brief points. First, it was clear that Getty was going to be sold to someone. And second, with the agreement between Getty and Texaco for a merger, it was clear that certain antitrust problems existed. The Federal Trade Commission specifically identified, as was their responsibility, the Denver market among others, where the new merged company would have an excessive share of the refined petroleum product sales. To correct the antitrust problem in the Denver market, Texaco agreed in an FTC consent order to sell the El Dorado refinery and certain other assets the FTC believed were necessary to maintain competition in Denver petroleum sales.

The FTC's goal clearly stated is to maintain the El Dorado refinery as a viable, ongoing operation to insure continued competition in the Denver market. If the El Dorado refinery is closed or its operations substantially curtailed, that goal is defeated.

That brings us to the key question today, does the proposed consent order adequately safeguard the future operation of the El Dorado refinery? If it does not, what additional steps are necessary to correct any and all deficiencies of the present order.

I believe the FTC has made a serious effort to achieve the goal it established. The Commission has tried to make the El Dorado refinery and related facilities an attractive package to assure its purchase by a credible and reliable new owner and operator.

However, I have two concerns about the package created in the proposed consent order. One is the issue of access to an assured crude oil supply. The other is continued supplies of natural gas. Crude oil and natural gas are critical raw materials for the continued operation of the refinery. The FTC concluded that it could not guarantee access to those raw materials as part of the consent order. However, FTC officials have said that access to all necessary raw materials will be carefully examined in approving any plan to sell the refinery.

This brings me back to the question raised earlier, are the present assurances in the consent decree and the FTC supervision of the sale sufficient or should stronger safeguards be developed.

The best interests of all concerned will be best served by a speedy resolution. The more we continue to stir it up and prolong the debate, the more difficult it may become to find a credible buyer.

As I said, it is with great pleasure that Congressman Whittaker has consented to share this responsibility of the hearing. We are all very appreciative of the leadership that he's provided in this. I might add that of course the Commerce Committees in both the House and Senate have oversight jurisdiction of the FTC and are responsible for its authorizing legislation. Congressman Whittaker.

STATEMENT OF HON. BOB WHITTAKER, U.S. REPRESENTATIVE FROM KANSAS

Mr. WHITTAKER. Thank you, Senator Kassebaum. As a member of the House Energy and Commerce Committee, I want to commend and thank you for providing this opportunity to review the proposed Getty/Texaco merger and its impact on the Getty refinery and the El Dorado community.

The need for this hearing is quite clear. In granting its conditional approval of the Getty/Texaco merger, the Federal Trade Commission has ordered Texaco to sell Getty's El Dorado refinery and related pipelines and retail facilities. The consent agreement between Texaco and the FTC clearly states that the purpose of this sale is to insure the continuation of the assets, and I quote, "as an ongoing, viable refining and marketing business."

I think it is safe to say that everyone in this room shares the common goal of insuring that the El Dorado refinery remains open. However, questions have arisen over exactly what the FTC means by "ongoing" and "viable" and over exactly what assurances the FTC has provided to guarantee its continued operation.

As my distinguished colleague has so aptly pointed out, the key issue we are confronted with today is whether or not the proposed consent order adequately safeguards the future operation of the El Dorado refinery. If not, we must determine what additional provisions are necessary to correct those deficiencies and avail ourselves of the opportunity to address these concerns during the ongoing public comment period on the proposed merger.

Clearly this county and the State of Kansas, for that matter, can ill afford to suffer the consequences of another refinery closing. My own home town of Augusta is recovering with courage and spirit from the closing of the Mobil refinery. The decision to sell and then close the Mobil refinery was made in the corporate boardrooms. Unfortunately, the Augusta refinery closing was not subject to review by the FTC, the Justice Department or, for that matter, Congress. However, because of the antitrust problems associated with the Getty/Texaco merger, the fate of the El Dorado refinery lies in the hands of the Federal Trade Commission, which is subject to congressional oversight. As elected Representatives, it is incumbent upon the Kansas congressional delegation to insure that the FTC has provided sufficient safeguards to preserve jobs and to provide for the continued operation of the El Dorado refinery.

Again, I want to thank the distinguished Senator for her initiative in scheduling this hearing. I look forward to a frank and serious discussion of the problems confronting us and to active participation from the members of the public who have joined us this morning. Thank you.

Senator KASSEBAUM. Thank you. Before we start with the first panel, I would just like to outline the procedure. It is our hope that we will be concluding by 2 o'clock. That may not be a problem because with the weather, neither Governor Carlin nor Congressman Slattery could come, and our witness list has diminished a bit. But the important panelists are here. Not that the others were not. I think that with that in mind, we should try to move our schedule along. We will have a 20-minute break midway so everybody can get up and stretch.

Those who have come in this morning should have received comment sheets and a brief outline of the merger review process as you came in. If you wish, please write questions or comments which you feel should be considered by the committee and the Federal Trade Commission. These sheets will be collected periodically throughout the hearing. Some of your questions will be asked by Congressman Whittaker and myself as the hearing progresses. In any event, your comments will be included as a part of the hearing record or forwarded to the FTC as official public comments.

There will also be a period of time in which we will take some questions directly from the audience, and we will try and limit those questions to three or four. But as I say, that may not be a problem this morning.

Before we proceed, I would just like to say a special thanks to Dr. Carl Heinrich and Butler County Community College—the people who have been involved in helping plan the hearing this morning. They have just been wonderful in providing a facility and cooperation that has made this hearing a very special one indeed.

It is a pleasure to welcome the first panel, again, certainly indicative of the keen interest that this issue presents us. Governor Carlin couldn't be here and Senator Gaines will have a brief comment from the Governor when he testifies.

It is a pleasure to welcome Congressman Dan Glickman and Attorney General Robert Stephan. I also have written testimony from Senator Dole, Congressman Slattery, and Congressman Roberts that will be made a part of the record.

[The statements follow:]

Statement of Hon. Bob Dole, U.S. Senator From Kansas

Mr. **Dole**. Madam Chairman, I appreciate this opportunity to comment on the proposed Texaco/Getty merger. The propriety of this transaction has been of great concern to me both in terms of our Nation's antitrust policy as well as the potential negative impact on the citizens of El Dorado. Although both Texaco and the FTC have provided me with substantial information regarding the rationale behind the tentative approval of this merger and the steps being taken to protect Kansas jobs, several questions must be resolved before I can be satisfied that this merger is in the best interest of either our country or Kansas. This hearing offers a valuable opportunity for representatives of affected companies and their employees, as well as the FTC, to demonstrate that no undue harm will be suffered by the citizens of Kansas, especially in El Dorado, if final approval is given to this merger.

ANTITRUST CONSIDERATIONS

Madam Chairman, the potentially negative impact of any large company merging with or buying out a competitor is obvious. From an antitrust standpoint, an increase in market share through acquisition can result in such a diminution of effective competiton that protection against artificially high prices and supply control which are built into the concept of free market commerce are lost. The potentially big loser is, of course, the consumer, who may well end up paying higher prices and having less choice concerning the who, how and where of buying a particular product. Of no less importance is the effect mergers in the oil industry, or any other industry for that matter, have in human terms—the loss of jobs and the modification of health and pension benefits for employees of companies involved. As the overall financial impact the mergers can have on local communities must also be carefully weighed.

During the past several weeks my staff and I have had the opportunity to review the Federal Trade Commission's policy and guidelines in relation to the proposed Texaco/Getty merger. As you know, as part of the FTC's tentative approval of that acquisition, Texaco must, within a certain period of time, divest itself of the Getty refinery (along with supporting pipelines and retail organizations) located in El Dorado. By selling this property to a party who will operate it as a direct competitor with Texaco in this market. According to the FTC, the operation of this facility by a viable third party is a necessary prerequisite to their determination that the Texaco/Getty merger will not duly upset the competivie balance in the affected market. What is troublesome to me is that it is unclear what the result will be if the El Dorado facility cannot be sold as a complete operating package within the 32-month period provided for by the FTC. This is a distinct likelihood, I might add, according to several oil experts I have consulted in Kansas. Will Texaco be allowed to continue operating the refinery? Will the facility be closed down if a buyer is not found? What effect would either of these options have on the competitive balance in the area? It seems to this Senator that the effect of these possible scenarios should be addressed and addressed now, before final consent to this merger is given.

COMMENT PERIOD

It is my understanding that the comment period regarding the Commission's tentative approval of this merger and the time for final approval will pass well before we find out if the El Dorado refinery can in fact be sold. The Texaco/Getty assets will be so commingled that even if we find out later the FTC plan for maintaining a competitive atmosphere in the market will not come to fruition, it will be too late to do anything about it. Although I am encouraged that the FTC has directed Texaco to fully operate the facility while a buyer is being sought and that there are requirements that the refinery be sold as a complete refining-marketing package, I think we need further assurances that everything is being done both on the part of Federal Trade Commission and Texaco to insure the future viability of the El Dorado refinery. To that end, I will ask the FTC to adopt two specific modifications to the current consent agreement, to wit:

(1) The period for filing comments in support of or in opposition to the proposed merger should be held open until the refinery is sold or the end of the 32-month period, which ever comes first. This only makes sense, since it would truly be difficult to determine the true impact on the competitive balance in the relevant markets until we know whether the El Dorado refinery can be sold as a operating package, and;

(2) That the "hold separate" agreement, whereby the assets of Texaco and Getty will remain separate and distinct, will stay in effect until the comment period closes.

It is this Senator's opinion that these modifications would enable us to obtain a complete picture of what the effects of this merger will be before it is too late to make any corrections.

While the debate rages in Washington about the larger question of whether oil company mergers are harmful to the public interest, my primary concern rests with insuring to the extent possible the preservation of jobs here in El Dorado. It is for that reason that my staff and I will continue to work with the companies involved and with the FTC to insure these jobs. The situation at hand is that Texaco wants to acquire Getty and it is being told that it may do so if the El Dorado refinery is sold. Texaco tells us that they can comply with that requirement in a way that will not be harmful to El Dorado. In my view, now is the time to sit back and see whether Texaco can deliver. If we simply put this merger on hold from a practical standpoint by having the FTC extend its comment period and by keeping the Texaco and Getty assets from being commingled, it seems to me that Texaco will have every incentive and opportunity to satisfy those of us concerned about the future of El Dorado.

Madam Chairman, thank you again for this opportunity to present my views on this matter to the committee. My office will stand ready to do what ever is necessary to protect the interests of El Dorado and its citizens.

STATEMENT OF HON. JIM SLATTERY, U.S. REPRESENTATIVE FROM KANSAS

I am very pleased to have this opportunity to present my concerns regarding the Getty/Texaco merger proposal to the Senate Commerce Committee, although I am not able to be present at the hearing to deliver my statement in person. Senator Kassebaum is to be commended for the leadership she has shown in organizing these hearings, so that the people of Kansas, and of El Dorado in particular, will be able to personally express their concerns over this matter to representatives of Texaco and of the Federal Trade Commission. This is a matter of critical importance to the people of Kansas, and I am hopeful that today's hearing will allow for a full and rational exchange of views on the complicated issues before us, as well as an opportunity for representatives advocating both sides of the question at hand to fully present their positions. The intersts of the people of Kansas will best be served by a carefully considered discussion of the options available, and not by a heated emotional debate.

As everyone is aware, the Federal Trade Commission has conditionally approved Texaco Inc.'s $10.0 billion acquisition of Getty Oil Co., by provisionally accepting a consent agreement with Texaco, requiring the company to make certain divestitures and take other steps to resolve the FTC's antitrust concerns with the merger.

The FTC's antitrust concern that is of particular concern to Kansans is the FTC's fear that the acquisition of Getty could reduce competition in the pricing of refined light products, such as gasoline and kerosene, that are transported into Colorado. Of the 4 pipelines serving Colorado, Texaco owns 40 percent of one and Getty owns 50 percent of another. To settle the FTC's concerns Texaco will divest Getty's interest in the Chase pipeline, as well as Getty's El Dorado refinery which serves the pipeline. Texaco will also divest Getty's interest in other related pipelines serving the Midwest and Getty's associated marketing, sales and transportaton operation in 15 states, primarily in the Midwest. Texaco must make all required divestitures within one year and the FTC must approve the acquirer. If Texaco does not divest the properties within the time limit, the consent agreement gives the FTC the right to appoint a trustee to make the divestitures. The consent agreement is currently open to public comment, after which the FTC will decide whether to make it final.

My concern, which I am sure will be shared by many of the participants in today's hearing, is over the continued operation of the El Dorado refinery. At the current time, 35 thousand barrels per day of crude oil are supplied to the refinery from Kansas wells. Another four thousand barrels per day are supplied from Oklahoma, and 31 thousand barrels per day are supplied from Texas. With Getty no longer in the picture, concerns have rightly been expressed about their future source of supply. The FTC has not required Texaco to guarantee a source of crude oil supply for the El Dorado refinery, as it did with Texaco's California operations, where it required Texaco to continue to sell heavy crude oil to independent California refiners that bought from Getty prior to its merger into Texaco. Those refiners had, in many cases, made costly adjustments to their refineries to process this unique type of oil. The merger raised a concern within the FTC whether such refiners could continue to obtain a crude supply. Texaco may have tax incentives, unrelated to the efficient use of the resources involved, to use heavy crude oil in its West Coast refineries. Such a shift could weaken competition from independent refiners, and might even cause some to leave the market. To prevent such problems, the consent order requires Texaco to continue supplying those current Getty refiner-customers for a five-year period, after which time the FTC anticipates that offshore sources of heavy crude oil already discover would be more than ample to eliminate any supply problem the merger might create for independent refiners.

The primary problem that I find with this merger was aptly summarized by FTC Commissioner Michael Pertschuk, who dissented from the conditional approval of the Getty/Texaco merger, in his testimony to the Senate Judiciary Committee on March 15, 1984, concerning the merger:

"The Texco-Getty consent agreement . . . requires that Texaco sell of refining pipeline and marketing assets within 12 months. If the consent agreement is finalizd, the FTC can do its best to insure Texaco finds a buyer and that the divested assests will be used productively, but the FTC can't guarantee that result. In most antitrust cases, the divestiture remedy works reasonably well, but in a highly integrated industry, where established sources of supply may not be easily replaced, it is reasonable to be concerned about whether the assets Texaco sells off will be as productive as before."

The bottom line of this situation, in my opinion, is that we cannot be sure that the refinery will be purchased by a buyer who will continue the present operations of the facility. In addition, we cannot be sure that the refinery's current sources of out-of-state supply will continue, once the merger is consummated and Getty ceases to exist as a separate entity. The FTC has stated that it will address these concerns when it reviews the sale of the refinery, assuming that such a sale takes place. While such assurances are undoubtedly made in good faith, I do not believe that they satisfactorially address the situation.

I believe that it is irresponsible to sit idly by, leaving open the possibility that the FTC's approval of this merger could result in the shutdown of this refinery. The FTC has taken the position that this merger would be a violation of the Clayton Act, without price competition for Texaco in the Colorado market in the form of a viable, independent El Dorado refinery serving the chase pipeline. I have no doubt that this is the case. Because of this need for competition, it is essential that the El Dorado refinery be kept in operation at current capacity. In addition, the refinery provides an essential sales outlet for Kansas oil producers, as well as substantial revenue to the State of Kansas in the form of severance taxes. Kansas will be very poorly served if this situation is changed.

It is my firm hope that the FTC will reconsider its current position after the expiration of the public comment period. I believe that the FTC would be acting wisely, and in the public interest, if it were to postpone approval of the merger until Texaco finds a buyer who is willing to continue the El Dorado refinery as a going concern. I strongly urge the FTC to adopt this position. In addtion, I believe that the FTC shoudl require Texaco to guarantee a reliable source of crude oil to the El Dorado refinery, in a manner similar to the requirements that were imposed upon Texaco in California. If the refinery cannot maintain a dependable source of supply, then the Chase pipline cannot continue in the marketplace as a competitive counterwight to Texaco, as the Clayton Act requires. While this requirement need not be for an indefinite period of time, it should be for a period long enough to allow other suppliers to become established as steady, dependable sources.

In conclusion, let me reiterate my hope that this hearing will be a useful tool for allowing representatives of the people of Kansas to express their deep concerns over this matter to the Federal Trade Commission and the representatives of Texaco. I intend to work closely with the FTC and with Texaco to reach a workable solution to our current dilemma that will protect the interests of all parties. I am deeply committed to the importance of the free, competitive marketplace as the linchpin of our economy, and my concern in this matter stems from my adherence to this standard. I am hopeful that a solution can be agreed upon that will fully protect the interests of the people of Kansas; I know that they will agree with me that we are entitled to nothing less.

STATEMENT OF HON. PAT ROBERTS, U.S. REPRESENTATIVE FROM KANSAS

I would like to thank Senator Nancy Kassebaum for calling this field hearing of the Senate Commerce Committee. Even though El Dorado is not in my district, the fiscal health of its refinery affects the Big First both as buyer of our crude oil and as seller of needed oil products.

During the March 8 meeting called by Congressman Whittaker, I was heartended by the Federal Trade Commission's commitment to the goal we all share—a viable El Dorado refinery. The March 8 meeting ended with the Federal Trade Commission's guarantee that their definition of refinery viability included adequate oil and gas inputs. Attorney General Stephan as well as members of the Kansas Legislature and the town of El Dorado outlined their concerns about specific measures to guarantee oil and gas inputs. I hope this hearing produces more specific commitments from the Federal Trade Commission on that point.

In addition, the Federal Trade Commission needs to outline what specific powers it has over oil company mergers and which of those powers it can and will utilize in this instance. No government agency can do everything for everybody, but it should clearly demonstrate how its actions will carry out its mandate.

A recent report issued by the Congressional Research Service[1] concludes that the merger's effect on the entire oil and gas industry is likely to be extremely small, but warns that regional patterns of distribution for refined products could be affected. I applaud the Federal Trade Commission''s examination of regional impacts and trust they will extend the same level of examination to state impacts.

Senator **KASSEBAUM**. Congressman Glickman.

STATEMENT OF HON. DAN GLICKMAN, U.S. REPRESENTATIVE, FROM KANSAS, AND ROBERT T. STEPHAN, ATTORNEY GENERAL, KANSAS

Mr. **GLICKMAN**. Thank you, Senator Kassebaum. In the first place, I must say that the fact that you have testimony and interest, I think, from all members of the delegation, directly or indirectly, together with the very fine pressure from our good friend and colleague, General Stephan here, indicates that the entire delegation considers this matter to be important both to the Nation and particularly to the State of Kansas and through your leadership we are able to focus our remarks right now so that we might get some change, some modification of the consent degree and perhaps some review of the whole issue in a formal setting, and we all appreciate that very much.

Let me first talk briefly about the broader question of what our national antitrust policy should be, particularly with regard to the oil industry. I realize that you specifically asked to get comments honed in on the consent decree, but since you are chairing a committee which has jurisdiction over the Federal Trade Commission, perhaps the agency may be more likely to modify this decree if they know that we are interested in their general process of approving mergers in the oil and gas industry. To put it simply, our antitrust laws were intended to preserve competition in this country, not to encourage concentration. Unfortunately, the present Federal Trade Commission has taken an approach of benign neglect at best and of trying to help modify a merger agreement which would otherwise violate the antitrust laws to bring them in under the wire at worst. And let there be no mistake about it, the Getty/Texaco merger violates the Clayton Act. It is violating that particular law because the Federal Trade Commission has acted as a doctor in this case and is trying to make the merged patient well by spinning certain assets off. We have to ask ourselves: Is that an appropriate role for Government to take?

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[1] Some Possible Economic Impacts of the Proposed Acquisition of Getty Oil Company by Texaco: A Tentative Analysis. Bernard A. Gelb, Economics Division, Congressional Research Service, Library of Congress. Report No. 84-529E.

Reducing competition is rightly viewed by this Nation's antitrust laws to be an economic negative. Less competition in the oil industry diminishes the ability of Kansas independent producers, and they are the ones who are doing the real exploration and development of our domestic reserves, to get the return they deserve on their production. Less competition in the oil industry means fewer options for consumers when it comes to buying petroleum products and, in all likelihood, higher prices.

The merger process itself also has negative implications for our economy. The sheer magnitude of the capital that is involved in these mergers is mind boggling. In the case of the Gulf/Standard Oil of California merger, most of Gulf's income and part of Standard of California's will be necessary to service the debt of the acquisition alone. That capital is going for no productive use whatsoever. It merely helps one company get its hands on some already developed reserves at a very good price, but it does tie up capital at a time when our capital markets are very, very tight. To the extent that borrowing is involved, there will also be some mighty massive tax writeoffs as a result of all of this.

The case we are all concerned about here today, the Getty/Texaco case, is a result of the misdirected laissez-faire policy that this administration has adopted and its halfhearted attempt to make it look like they are doing something. So that the Getty/Texaco merger can go ahead, the FTC has directed that a number of specific assets be spun off so that, as I said earlier, this particular merger will come in under the wire of the antitrust laws. In effect, the administration is putting the pressure on the refinery here in El Dorado, its employees, and those in this area who rely on it so that it can look like it is doing something to enforce the antitrust laws.

The language of the proposed consent decree seeks to alleviate the concerns we all share about the future of the El Dorado refinery, and I have talked with Texaco officials who are very optimistic about the prospects for this refinery to be sold as an ongoing operation so that jobs and economic activity will not be lost here in El Dorado.

I know that all of us on this panel have talked to Texaco officials. I know the attorney general and I talked with the vice president of Texaco in my office. Those assurances were made to us. Still I am very troubled that this has not been thought out as well as it should have been. There are plenty of questions that need to be looked into, including in fact the concentration issue. We have a right to expect the FTC will assure that they have been given satisfactory consideration before this merger is given the final OK. That is going to take a considerable amount of time. I would strongly urge, as the Senator mentioned, that an extension of the present 60-day comment period be favorably considered.

There are a lot of good intentions here being expressed by Texaco, the FTC, and others. As we have heard many times in the past, the path to hell is often paved with good intentions. It is time to get an extension of this comment period so that we review the situation to insure that there is more substance than good intentions in the continued operation of this refinery.

Now, there are a couple of specific points that do need to be cleared up in the consent decree which are immediately evident.

One, the language of the proposed decree requires Texaco to sell the El Dorado refinery and related facilities as an ongoing operation. However, should the job of selling these assets fall on a trustee appointed by the FTC, it is not clear that the same ongoing operation standard is applicable. From my conversations with Texaco officials, I can say that it is their understanding that the same obligation remains in effect, and that if necessary to meet that standard, the time for the trustee to sell the El Dorado facilities as an ongoing business is to be extended. Furthermore, from those conversations, it is my understanding that Texaco interprets the ongoing standard operation to mean ongoing in substantially the same capacity as is the case today. I think those understandings should be written into the consent agreement. That will assure that the good intentions of today are not forgotten once the merger is finalized. It will also assure that the FTC meets this standard better than it has been complying with the spirit of our antitrust laws.

Second, the proposed decree specifically provides for assured access to crude supplies for Getty customers in southern California. The argument has been made that a different set of circumstances exists there in California that makes that necessary, and that it is not needed here in Kansas. Certainly our Kansas independents will be providing a good share of crude to this refinery, but we all realize that it has also counted on other sources of crude as well. There is speculation which I have heard just as recently as late last week that one of the pipelines that feeds into the El Dorado refinery, the Texoma pipeline, which is the black pipeline coming up from Cushing, Okla, up to El Dorado, in which Getty is a part owner, not a majority owner, but a part owner, could very well be sold off completely outside the purview of this consent decree. As a matter of fact, that same hearsay or speculation leads me to believe that that sale or approval of that sale could take place this week.

Now, with speculation like that, I think it is completely reasonable for us to expect assurances like those provided to Californians to be extended in the El Dorado case. That is unclear at least as of the present time. I do not think that the refinery in the past has relied very much on the crude from the Texoma pipeline, but that pipeline being sold off could in a sense squeeze the refinery in a changing and volatile oil and gas market, thus making more likely a closing down of the refinery at some future point in time.

I am sure this hearing will focus attention on other factors that need to be brought into the consent agreement. Since it is evident that this particular merger is going to be finalized, it is of vital importance that we see the consent decree incorporate the protection necessary to insure that the good intentions referred to in the draft decree turn into reality and stay that way. Thank you very much.

[The statement follows:]

STATEMENT OF HON. DAN GLICKMAN, U.S. REPRESENTATIVE FROM KANSAS

Senator Kassebaum I'm sure you know that all of us in the Kansas Congressional delegation are pleased that you have arranged for this hearing. The Texaco-Getty merger has generated concern both here in Kansas and around the country. It needs to be examined from two perspectives, the broad antitrust policy of this country and the localized implications of this specific merger here in Kansas.

Let me first talk briefly about the broader question of what our national anti-trust policy should be particularly with regard to the oil industry. To put it simply, our anti-trust laws were intended to preserve competition in this country, not to encourage concentration. Unfortunately, the present FTC and Justice Department has taken an approach of benign neglect at best and of trying to help modify merger agreements which would otherwise violate the antitrust laws to bring them in under the wire at worst. That has got to be stopped.

Reducing competition is rightly viewed by this nation's anti-trust laws to be an economic negative. Less competition in the oil industry diminishes the ability of Kansas independent oil producers—and they are the ones who are doing the real exploration and development of our domestic energy resources—to get the return they deserve on their production. Less competition in the oil industry means fewer options for consumers when it comes to buying petroleum products and, in all likelihood, higher prices.

The merger process itself also has negative implications for our economy. The sheer magnitude of the capital that is involved in these mergers is mindboggling. In the case of the Gulf-SoCal merger, most of Gulf's income and part of SoCal's will be necessary to service the debt of the acquisition alone. That capital is going for no productive use whatsoever; it merely helps one company get its hands on some already developed reserves at a good price. But it does tie up the capital at a time when our capital markets are very, very tight. To the extent that borrowing is involved, there will also be some mighty massive tax write-offs as a result of all of this.

The case we are all concerned about here today is a result of the misdirected, laissez-faire policy that this Administration has adopted and its half-hearted attempt to make it look like they are doing something. So that the Getty-Texaco merger can go ahead, the FTC has directed that a number of specific assets be spun off so that, as I said earlier, this particular merger will come in under the wire of the antitrust laws. In effect, the Administration is putting the pressure on the refinery here in El Dorado, its employees and those in this area who rely on it, so it can look like it is doing something to enforce the anti-trust laws.

The language of the proposed consent decree seeks to alleviate the concerns we all share about the future of the El Dorado refinery, and I have talked with Texaco officials who are very optimistic about the prospects for this refinery to be sold as an ongoing operation so that jobs and economic activity will not be lost here in El Dorado. Still, I am very troubled that this has not all been thought out as well as it should have been. There are plenty of questions that need to be looked into, and we have a right to expect that the FTC will assure that they have been satisfactorily resolved before this merger is given the final okay. That is going to take a considerable amount of time, and I would stongly urge the extension of the present sixty day comment period.

There are a couple of specific points that do need to be cleared up in the consent decree which are immediately evident:

First, the language of the proposed decree requires Texaco to sell the El Dorado refinery and related facilities as an ongoing operation; however, should the job of selling these assets fall on a trustee appointed by the FTC, it is not clear that the same "ongoing operation" standard is applicable. From my conversations with Texaco officials, I can say that it is their understanding that the same obligation remains in effect and that, if necessary to meet that standard, the time for the trustee to sell the El Dorado facility as an ongoing business is be extended. Furthermore, from those conversations, it is my understanding that Texaco interprets the "ongoing operation" standard to mean ongoing in substantially the same capacity as is the case today. I think those understandings should be written into the consent agreement. That will assure that the good intentions of today are not forgotten once the merger is finalized. It will also assure that the FTC meets this standard better than it has been complying with the spirit of our anti-trust laws.

Second, the proposed consent decree specifically provides for assured access to crude supplies for Getty customers in Southern California. The argument has been made that a different set of circumstances exists there that makes that necessary and that it isn't needed here in Kansas. Certainly, our Kansas independents will be providing a good share of crude to this refinery, but we all realize that it has also counted on other sources of crude as well. There is speculation now that at least one of the piplines that feeds into the El Dorado refinery in which Getty is a part owner could very well be sold off completely outside the purview of this consent decree. With speculation like that, I think it is completely reasonable for us to expect assurances like those provided to Californians to be extended in the El Dorado case.

I'm sure this hearing will focus attention on other factors that need to be brought into the consent agreement. Since it is evident that this particular merger is going to be finalized, it is of vital importance that we see that the consent decree incorporates the protections necessary to assure that the good intentions referred to in the draft decree turn into reality and stay that way.

Senator KASSEBAUM. Thank you very much. General Stephan.

Mr. STEPHAN. Senator Kassebaum, Representive Whittaker, I too want to thank you for this hearing. I want to thank Congressman Whittaker for the meeting that was arranged with staff of the FTC in Washington, D.C. I think it was very helpful, sometimes volatile. But if you don't have discussion, you don't get anything done. I am most appreciative of the avenue that was opened up by reason of that hearing, Congressman Whittaker. I am of course aware of Senator Kassebaum's position in the U.S. Senate, the respect that the Senator receives in her position in the Commerce Committee, which is so important to the problem that we face in Kansas. I think that gives us here a special meaning, in my opinion a very critical meaning in regard to the interests of Kansans in regard to this merger.

I also want to thank three of your counterparts, Kansas legislators, Senator Frank Gaines, Representative Kenneth King and Representative Kenneth Green, who have worked actively and diligently in trying to present the concerns of their constituents in this area.

I have some prepared remarks that I would like to make. My remarks will generally focus upon the problem here, the Kansas concern, and not so much the concern generally of mergers and of the laws in the area of corporate mergers.

This first came to my attention in January as I was reading news accounts of the merger, and I must admit that at first it did not cause me any great concern. I became more concerned, however, when I learned about the different marketing policies of Texaco and Getty. One company, Texaco, utilized the bulk of its refined product itself with little of it going to independent wholesalers or jobbers. Getty on the other hand had been a leading source of product supply for these businesses. Those suppliers are the primary source of refined product for unbranded retail marketers. These nonbranded independent retailers are a primary competitive force in the sale of motor gasoline and diesel fuel used in farming.

I still did not feel compelled to take action because I knew of the mandatory Government review process on mergers of this magnitude.

Perhaps I should inject at this point that the fact that there was a consent decree indicated does not mean that this is something unusual. Indeed, it is often necessary to make sure that merged companies do comply with the spirit of the law and the law itself in regard to antitrust matters. And one of the roles of the Federal Trade Commission and justly so is to make certain that when companies in the free enterprise system, as we have in this country, see fit to merge, that that merger does not stifle competitive activity. And so that is really the bottom line as I see it of any kind of a consent decree that is entered into by the FTC. Then on February 14 a number of things happened that led to the present activist position of State authority. The Federal Trade Commission on February 13 filed its proposed consent order regarding the merger. State Senator Frank Gaines of Augusta advised other Senators and State officials of the situation and Senate President Ross Doyen immediately called a bipartisan meeting of State government leaders to assess the matter and decide on a course of action. This meeting took place that same afternoon. I as attorney general was directed to advise the Governor and the legislature of the available legal procedures and the possibility of stopping or modifying the merger plan. This report was presented at noon, February 16. You have been provided with an attachment that shows the work involved in that aspect.

Let me just state briefly the law on the subject. Section 7 of the Clayton Act provides that no person shall acquire stock where in any line of commerce, in any section of the country, the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly. The basic purpose of this law is to prevent economic concentration by keeping a larger number of smaller competitors in business.

It is not necessary under the Clayton Act to prove that a merger will certainly result in monopoly or substantially lessen competition. Neither does a mere possibility of lessened competition result in a violation of the Clayton Act. Rather, it is required that a merger create a reasonable probability that there will be an anticompetitive effect for this act to be violated.

The Federal Trade Commission requires firms undertaking these large mergers to notify it and supply special reports concerning the mergers. The purpose of this is of course to assure that there is not diminished competition, that the competitive market remain open. The FTC has the authority to bring an action against the merging corporations if it perceives a violation of law. In addition, it may also make recommendations to the corporation, such as divestiture of certain properties, which might tend to restore the balance of competition.

The problem as I see it. After the Texaco/Getty merger was announced but before the consent order, there existed in Kansas the possibility of an anticompetitive effect. After the consent order with its divestiture requirement, the situation here matured into a reasonable probability. The FTC staff foresaw the probability of diminished competition in the Denver, Colo., market area if Texaco retained Getty's El Dorado refinery and 50 percent ownership in the Chase pipeline. That pipeline runs from El Dorado to Denver. The refinery and the pipeline supply up to 50 percent of the refined product for the Denver market area. Texaco already owns interests in other pipelines going into that market. By requiring Texaco to sell the refinery and its interests in the pipeline, the FTC believed a likelihood of diminished competition in the Denver area could be averted. I truly believe the FTC acted in good faith in this regard. However, no specific safeguards were included to insure that the El Dorado refinery would remain viable and thus marketable.

Half of the crude oil necessary for the El Dorado refinery to operate at maximum efficiency is available from Kansas producers. Presently the bulk of the balance of crude required is owned by Getty, either directly or through exchanges. Obviously, in order to operate at peak efficiency, there is a need for a guaranteed supply of up to 50,000 barrels per day of crude oil at the El Dorado refinery. To guarantee that supply, the gathering lines from western Kansas producers must be maintained and a sufficient quantity of crude from Texaco must be provided. Of course this would guarantee a continued market for Kansas crude as well. There also are independent refiners in Kansas who depend on Getty for a supply of crude. The order must guarantee continuation of that supply.

In addition to the need for a guaranteed supply of crude, there are other requirements for the refinery to be an attractive property to prospective purchasers. There is a need for fuel for the refinery's boilers. Getty presently uses its own fuel for this purpose. There is a need for the national gas liquid storage facilities at Conway. This provides a convenient method of supply and storage of this essential part of the refining process. The consent order must address these problems.

Product in the Chase pipeline is subject to numerous exchange agreements. These should be maintained as a factor in continuing an adequate level of competition in the western Kansas market area served by that pipeline. Additionally, the order must provide that any purchaser agree to maintain Getty's policy of marketing to independent wholesalers and jobbers to further that competitive force.

When the final order of the FTC is issued, it will probably become effective upon issuance. This does not give us time to study the order, to make a determination as to whether additional legal procedures or actions should be taken. In fairness to all concerned parties, I would suggest that the order not become effective for 60 days after the issuance and the Getty properties be required to be held separate for that time. I have attached a preliminary comment on this subject which was filed Friday with the Federal Trade Commission. The Congress might even want to pass appropriate legislation to guide the FTC in this regard.

I would now like to summarize my remarks. Overall, it is our position that the FTC consent order does not provide adequate safeguards to insure continued operation of the El Dorado refinery. We believe that without adequate supplies of crude oil and boiler fuel and without the storage facility for the natural gas liquids, there is a strong possibility no purchaser could be found for the property. It follows then that the operation could not continue as a viable, ongoing business and Texaco would be required to close the facility because the FTC divestiture forbids Texaco from owning the refinery. Of course that would have disastrous consequences on this community and the Kansas economy. It also would result in the reasonable probability of diminished competition in violation of the Clayton Act. This merger's effect on competition in Kansas and its effect on the economic future of El Dorado and this State go hand in hand. The FTC must modify the consent order both to insure continued operation of the El Dorado refinery and to prevent violations of the antitrust law.

In conclusion, I wish to make it clear that it is my intent to assist all involved in maintaining the Getty Kansas properties as a viable, ongoing concern. I believe the consent order must be modified to specify with particularity those items necessary to accomplish that goal. At the risk of being redundant, I want to set them out point by point.

First, Texaco must provide any purchaser, so desiring, and any Kansas independent refinery dependent on Getty crude with sufficient crude oil at posted prices to maintain the refineries at their 1983 level of production for a minimum of 10 years.

Second, any purchaser must be required to utilize crude oil produced in Kansas at least at the same level utilized by Getty in 1983, and the Getty oil and natural gas gathering lines must be maintained as an integral part of the refinery.

Third, any purchaser must be required to maintain a marketing policy of refined product whereby independent wholesalers and jobbers have access to a supply of such product no less than that provided by Getty from its El Dorado refinery in 1983.

Fourth, Texaco must be required to purchase from the new owner of the refinery a sufficient supply of refined product to maintain the exchange agreements Getty has in force in Kansas at the present time.

Fifth, Texaco must be required to supply any purchaser so desiring with boiler fuel sufficient to maintain the operation of the refinery at its 1983 level of production for a minimum period of 10 years. The cost of such fuel should not exceed the 1983 price as adjusted by appropriate indices.

Sixth, the storage facility at Conway must be a part of the Getty Kansas properties required to be divested and sold to the purchaser of the refinery.

Seventh, the consent order must set out specifically the Getty Kansas properties required to be divested.

And eighth, the Commission's final decision should not become effective until 60 days after date of issuance, and Texaco should be required to hold Getty properties separately for 60 days following any FTC final decision to allow interested parties to assess the order's effects. Legislation should be enacted to require it.

I believe these recommendations are essential to insure the continuation of the assets as an ongoing, viable petroleum refining and marketing business. Thank you for allowing me to make these comments and to outline the concerns of Kansas governmental officials in this area.

[The statement follows:]

Statement of Robert T. Stephan, Kansas Attorney General

When I first read news articles in January of this year concerning the Texaco/Getty merger, I must admit it caused me only minor concern. I became more concerned when I leaned about the different marketing policies of these two companies. One company, Texaco, utilized the bulk of its refined products itself, with little of it going to independent wholesalers or jobbers, Getty, on the other hand, had been a leading source of product supply for those businesses. Those suppliers are the primary source of refined product for the unbranded retail marketers. These nonbranded, independent retailers are a primary competitive force in the sale of motor gasoline and diesel fuel used in farming.

I still did not feel compelled to take action because I knew of the mandatory government review process on mergers of this magnitude. I maintained that posture until February 14th. A number of things happened at that time which led to our present activist position. The Federal Trade Commission had, on February 13th, filed its proposed Consent Order regarding the merger. State Senator Frank Gaines of Augusta advised other state senators of the situation, and Senate President Ross Doyen immediately called for a bipartisan meeting of state government leaders to assess the matter and decide on a course of action. This meeting took place that same afternoon. I, as attorney general, was directed to advise the governor and the legislature of available legal procedures and the possibility of stopping or modifying the merger plan. This report was presented at noon, February 16th. You have been provided with a copy and I am including another to accompany my testimony today.

I. THE LAW

Section 7 of the Clayton Act provides that "no person . . . shall acquire . . . stock . . . where in any line of commerce . . . in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." The basic purpose of this law is to prevent economic concentration by keeping a larger number of smaller competitors in business.

It is not necessary under the Clayton Act to prove that a merger will certainly result in monopoly or substantially lessened competition. Neither does a possibility of lessened competition result in a violation of the Clayton Act. Rather, it is required that a merger create a reasonable probability that there will be an anticompetitive effect for this act to be violated.

The Federal Trade Commission requires firms undertaking large corporate mergers to notify it and supply special reports concerning mergers. The purpose of this requirement is to provide the FTC with sufficient information to determine if there is a likelihood of diminished competition as a result of the merger, which would be in violation of the Clayton Act.

The FTC has the authority to bring an action against the merging corporations if it perceives a violation of the law. It may also make recommendations to the corporations (such as divestiture of certain properties) which might tend to restore the balance of competition.

II. THE PROBLEM

After the Texaco/Getty merger was announced, but before the Consent Order, there existed in Kansas the "possibility" of an anticompetitive effect. After the Consent Order with its divestiture requirement the situation here matured into a "reasonable probability."

The FTC staff foresaw the probability of diminished competition in the Denver, Colorado, market area if Texaco retained Getty's El Dorado refinery and 50 percent ownership in the Chase Pipeline. That pipeline runs from El Dorado to Denver. The refinery and pipeline supply up to 50 percent of the refined product for the denver market area. Texaco already owns interests in other pipelines going into that market. By requiring Texaco to sell the refinery and its interest in the pipeline, the FTC believed the likelihood of diminished competition in the Denver area could be averted. I truly believe the FTC acted in good faith in this regard. However, no specific safeguards were included to ensure that the El Dorado refinery would remain viable and thus marketable.

Half of the crude oil necessary for the El Dorado refinery to operate at maximum efficiency is available from Kansas producers. Presently the bulk of the balance of crude required is owned by Getty (either directly or through exchanges). Obviously, in order to operate at peak efficiency, there is a need for a guaranteed supply (up to 50,000 barrels per day) of crude oil at the El Dorado refinery. To guarantee that supply, the gathering lines from western Kansas producers must be maintained and a sufficient quantity of crude from Texaco must be provided. Of course, this would guarantee a continued market for Kansas crude as well. There also are independent refiners in Kansas who depend on Getty for a supply of crude. The Order must guarantee continuation of that supply.

In addition to the need for a guaranteed supply of crude, there are other requirements for the refinery to be an attractive property to prospective purchasers. There is a need for fuel for the refinery's boilers. Getty presently uses its own fuel for this purpose. There is a need for the natural gas liquid storage facilities at Conway. This provides a convenient method of supply and storage of this essential part of the refining process. The Consent Order must address these problems.

Product in the Chase Pipeline is subject to numerous exchange agreements. These should be maintained as a factor in continuing an adequate level of competition in the western Kansas market area served by the pipeline. Additionally, the Order must provide that any purchaser agree to maintain Getty's policy of marketing to independent wholesalers and jobbers to further that competitive force.

When the final order of the FTC is issued, it will probably become effective upon issuance. This does not give us time to study the order to make a determination as to whether additional legal procedures or actions should be taken. In fairness to all concerned parties, I would suggest that the order not become effective for 60 days after issuance and the Getty properties be required to be held separate for that time. I've attached a preliminary comment on this subject which was filed Friday with the FTC. The Congress might even want to pass appropriate legislation to guide the FTC in this regard.

III. SUMMARY

Overall, it is our position that the FTC Consent Order does not provide adequate safeguards to ensure continued operation of the El Dorado refinery. We believe that without adequate supplies of crude oil and boiler fuel and without the storage facility for the natural gas liquids, there is a strong probability no purchaser could be found for the property. It follows then that the operation could not continue as a viable ongoing business and Texaco would be required to close the facility because the FTC divesture forbids Texaco from owning the refinery. Of course, that would have disastrous consequences on this community and the Kansas economy. It also would result in the reasonable probability of diminished competition in violation of the Clayton Act. This merger's effect on competition in Kansas and its effect on the economic future of El Dorado and this State go hand-in-hand. The FTC must modify the Consent Order both to ensure continued operation of the El Dorado refinery and to prevent violations of antitrust law.

In conclusion, I wish to make clear that it is my intent to assist all involved in maintaining the Getty Kansas properties as a viable, ongoing concern. I believe the Consent Order must be modified to specify with particularity those items necessary to accomplish that goal. At the risk of being redundant, I will set them out point-by-point.

1. Texaco must provide any purchaser, so desiring, and any Kansas independent refinery dependent on Getty crude with sufficient crude oil at posted prices to maintain the refineries at their 1983 level of production for a minimum of 10 years.
2. Any purchaser must be required to utilize crude oil produced in Kansas at least at the same level utilized by Getty in 1983, and the Getty oil and natural gas gathering lines must be maintained as an integral part of the refinery.
3. Any purchaser must be required to maintain a marketing policy of refined produce whereby independent wholesalers and jobbers have access to a supply of such product no less than that provided by Getty from its El Dorado refinery in 1983.
4. Texaco must be required to purchase from the new owner of the refinery a sufficient supply of refined product to maintain the exchange agreements Getty has in force in Kansas at the present time.
5. Texaco must be required to supply any purchaser, so desiring, with boiler fuel sufficient to maintain the operation of the refinery at its 1983 level of production for a minimum period of 10 years. The cost of such fuel should not exceed the 1983 price as adjusted by appropriate indices.
6. The storage facility at Conway must be a part of the Getty Kansas properties required to be divested and sold to the purchaser of the refinery.
7. The Consent Order must set out specifically the Getty Kansas properties required to be divested.
8. The Commission's final decision should not become effective until 60 days after date of issuance, and Texaco should be required to hold Getty properties separately

for 60 days following any FTC final decision to allow interested parties to assess the Order's effects. Legislation should be enacted to require the same.

I believe these recommendations are essential to "ensure the continuation of the assets as an ongoing, viable petroleum refining and marketing business . . ."

Attachments.

Before the Federal Trade Commission, Washington, D.C.

(File No. 841-0077)

IN THE MATTER OF TEXACO, INC., A CORPORATION, AND GETTY OIL COMPANY, A CORPORATION

INITIAL COMMENTS OF THE ATTORNEY GENERAL OF KANSAS

The Attorney General of Kansas, Robert T. Stephan, on behalf of the State of Kansas and its citizenry, hereby files his initial comments in connection with the Notice which the Federal Trade Commission published on March 7, 1984 (49 Fed. Reg. 8550) (the "Notice") regarding the proposed acquisition of Getty Oil Company ("Getty") by Texaco, Inc. ("Texaco").

The State of Kansas and its citizens have a real and significant interest in this proceeding because Texaco's proposed acquisition includes Getty's 82,000 barrel per stream day refinery in El Dorado, Kansas, along with all of Getty's related crude pipelines and terminals and its marketing, sales and transportation assets in Kansas.

The Attorney General is filing these initial comments to call the Commission's attention to a serious procedural problem which must be addressed immediately in order to allow the Attorney General and the public in general sufficient time to assess the Commission's final action in this matter.

More specifically, under Paragraph 12 of the "Agreement to Hold Separate" which the Commission entered into with Texaco on February 13, 1984, that Agreement will terminate on the earlier of (a) the date the Commission finally approves the Consent Order or 3 business days after the Commission withdraws its acceptance of the Consent Order, or (b), at Texaco's option, 120 days after publication of the Consent Order in the Federal Register, which would be July 5, 1984.

If the Commission were to approve the Consent Order in its present form at any time prior to July 5, 1984, then Texaco—under the terms of Paragraph 12—must continue to hold separate only those Getty properties actually listed in Schedule A to the Consent Order until they are divested by Texaco. However, under the Agreement to Hold Separate, Texaco would be free at any point after acceptance of the Consent Order by the Commission to fully integrate all other Getty properties (i.e., those not specifically listed in Schedule A) into Texaco's operations. Presumably, this would include the Getty crude oil producing properties which historically have supplied over one-half of the crude oil feedstock needs of Getty's El Dorado, Kansas refinery.

Under these circumstances, the Attorney General cannot await the Commission's final action on the Consent Order before deciding whether independently to seek a court order blocking the acquisition divestiture of the El Dorado refinery without a guarantee by Texaco that adequate crude oil will be made available to the purchaser at competitive prices will insure the ultimate closing of the refinery. Should that eventually occur, there is no question but that the effect of the acquisition will be a substantial lessening of competition in Kansas, in violation of Section 7 of the Clayton Act.

Accordingly, the Commission must immediately secure Texaco's consent to amend Paragraph 12 of the Agreement to Hold Separate to read in its entirety as follows:

12. This Agreement will terminate on the earlier of:

a. 60 days after the date after the Commission finally approves the Consent Order; or

b. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules.

Provided, however, that if the Commission finally approves the Consent Order, this Agreement will continue to pertain to the Schedule A properties of Getty until Texaco divests the Schedule A properties.

Further, the Attorney General asks that the Commission publicly announce whether the Agreement to Hold Separate will be so modified by April 7, 1984. To this end, the Commission should immediately give public notice of the Attorney

General's request, invite public comments to be filed on an expedited basis and enter into discussions with Texaco to secure its agreement to the modification.

The Attorney General intends to submit additional comments to the Commission which address all competition-related issues and those regarding the specific provisions of the proposed Consent Order. However, the critical importance of this procedural matter has made it necessary to file these initial comments at this time.

Respectfully submitted,

ROBERT T. STEPHAN,
Attorney General of Kansas Judicial Center.
Of Counsel:
JACK A. BLUM,
EDWARD G. MODELL,
Blum, Nash & Railsback.

OFFICE OF THE ATTORNEY GENERAL,
Topeka, Kans., February 16, 1984.

Hon. JOHN CARLIN,
Governor.
Hon. ROSS DOYEN,
President of the Senate.
Hon. MIKE HAYDEN,
Speaker of the House of Representatives.

GENTLEMEN: You have sought our advice relative to the proposed acquisition of Getty Oil Company by Texaco, Inc. You have specifically asked what legal procedures are available and more specifically whether the acquistion can be stopped or modified.

Our concerns and yours about this merger are based on the possibility of lessened competition and the status of the Getty refinery in El Dorado. The concern relating to lessened competition is based on the marketing policies of the two businesses. Historically Getty has sold a substantial percentage of its product to smaller independent wholesalers and jobbers while Texaco has utilized the bulk of its product itself and has not made it available to the independents. These independents are the major source of supply for smaller retailers which generally charge the consuming public less for the product. With the absorption of Getty, we are fearful that a major source of supply to those independents would cease to exist and they would be unable to supply their customers.

Before responding directly to your concerns we believe it is important to point out certain facts which are a result of those prerequisites. We also believe a brief discussion of the law will be helpful to your understanding of the situation.

Prior to accomplishing an acquisition or merger such as this, the plan must be submitted to the Federal Trade Commission. The FTC may grant, deny or as is the case here grant with modifications the plan submitted and embody it in the form of a proposed consent decree.

Of critical interest to Kansas was one of the modifications which required the divestiture of the El Dorado refinery—in other words, that refinery is not to be a part of the merged business entity. The order requires that it be sold as a going business within one year from the date of final decree. All of this together with other modifications is embodied in a proposal for consent decree which has been filed with the FTC. Before this proposed consent decree can become final, a period of 60 days has been authorized by agreement to permit written comments to be filed with the FTC. This period of time is referred to as the "comment period" during which the commission is to receive and analyze comments from any and all interested parties. The commission then may enter the order as is, modify it or refuse to enter it at all. The comment period relevant here started Monday (February 13, 1984).

The applicable law which governs the legality of such an acquisition is Section 7 of the Clayton Act (15 U.S.C. § 18). The pertinent portion of Section 7 prohibits an acquisition of all or any part of the stock or assets of another corporation, if the result might be a substantial lessening of competition, or a tendency to create a monopoly. We do not have sufficient information available to us at this time, to determine if there is a violation of this law. The statute contains certain specific exemptions which do not appear to be applicable. The basic point necessary for us to prove would be whether the results of this acquisition might be a substantial lessening of competition.

The fact that an action has been filed before the FTC proposed consent decree does not preempt us from filing an action in court. The various state Attorneys General are specifically granted the authority to commence actions in federal district either for recovery of damages on behalf of injured citizens or for injunctive relief. Such an action could and would be filed in the United States District Court for the District of Kansas.

In the course of the preceding comments, we have mentioned two of the various courses of action available. Those are the right to comment on the proposed consent decree and the right to file suit for injunctive relief. There are at least two other methods available for accomplishing our goal of protecting the interests of Kansas. One would be through filing a motion for permission to intervene in a pending case in Rhode Island. This case, brought by a private plaintiff, seeks to enjoin the acquisition. If the court allowed us to intervene we could then urge our position on the court and seek also to block the merger. Another method would be through direct negotiation with Texaco.

It is our best judgment that the recommended course of action be as follows:

1. Direct negotiation with Texaco:

We should seek assurance that the refinery will be offered for sale only to such purchasers with the requisite financial resources to maintain it at its present capacity.

We should also seek assurance that independent wholesalers and jobbers would be assured of at least the present level of supply of product.

2. Filing of comments with the FTC:

Our comment primarily would be focused on our opposition to the merger. Alternatively, our comments would be to urge inclusion in the consent decree protections for Kansas citizens, business interest and the refinery at El Dorado.

The last two alternatives should be:

3. Intervention in the case in Rhode Island:

This could be done in two different ways. We could move to intervene directly and become a party-plaintiff in the lawsuit or we could join with the other states and file a brief *amicus curiae* in support of the plaintiff in the case. Of these two we believe the latter would be the better choice because we could be just as effective and have no risk that the court would not allow us to participate.

4. Filing of a separate action in federal court:

We list this as the last choice based purely on practical reasoning. The litigation likely would take several years and it is unlikely that the acquisition would be halted during its pendency.

We recommend that we hire outside counsel to represent Kansas in this matter irrespective of the various choices of action. This situation involves extremely complex legal issues with the initial forum being in Washington, D.C. that requires counsel experienced in this area of the law. In this connection we will likely require additional expenditure authority from the attorney general's antitrust special revenue fund and therefore additional money from the general fund will not be required at the present time.

I have written letters to Sen. Dole, Sen. Kassebaum, Rep. Winn, Rep. Glickman, Rep. Whittaker, Rep. Roberts and Rep. Slattery urging that they join us in our comments to the FTC and take any other action they deem appropriate, including the holding of congressional hearings, if necessary.

Respectfully yours,

ROBERT T. STEPHAN,
Attorney General of Kansas.

BLUM & NASH, ATTORNEYS AT LAW,
Washington, D.C.

To: Honorable Robert T. Stephan Attorney General of Kansas.
From: Jack A. Blum, Bernard Nash.
Date: February 15, 1984.
Re: Texaco-Getty Merger.

You have asked our views on possible courses of action for the State of Kansas with respect to the now consummated acquisition of Getty Oil Company stock by Texaco. Although the stock has been purchased, the companies will be held separate for at least sixty (60) days pursuant to an FTC consent decree. This gives you time to decide on a course of action.

At the outset, it should be observed that the merger will have a severe impact on the states of Kansas and Colorado. In particular, the 84,000 barrel a day refinery at El Dorado is a major source of petroleum supplies for Western Kansas. Other refiners make product available to independent marketers in Kansas through exchange agreements with Getty. The other refiners tell their customers to pick up supplies at the El Dorado refinery.

Getty has been a low price, aggressive marketer of both gasoline and diesel fuel. The low prices are the result of Getty control of its own crude.

Even though the Federal Trade Commission has ordered the El Dorado refinery and the Kansas marketing assets divested, the key to Getty's success was its control of crude oil by contract and ownership. That crude oil will no longer be committed to the El Dorado refinery. Further, Getty, as a major company, had other marketing operations which were product short, a fact which encouraged it to make product exchanges. The exchanges are the key to competition by other firms in Western Kansas.

If the refinery is sold to an independent which has no crude, it is virtually certain that product prices in Western Kansas as well as in the Denver, Colorado market, which is served by a pipeline from the El Dorado area, will rise significantly. The negative impact on agriculture, a major user of diesel fuel, should be obvious.

Suppliers who previously worked exchanged agreements will find it necessary to resort to purchases rather than exchanges to supply customers. Some firms will withdraw rather than pay the premium price to supply customers in that market. Therefore, independent marketers will find themselves unable to purchase competitively priced products and might very well find themselves out of business.

The situation in Eastern Kansas is somewhat different inasmuch as the key product supply channel is the Williams Brothers Pipeline which comes up from the Cushing/Tulsa area. The independent refiners in Oklahoma have faced serious trouble—witness the bankruptcy of Hudson located in Cushing—and it is not likely that the situation will improve. They need access to competitively priced crude oil. The merger will make their problem worse.

The most serious competitive objection to the Texaco-Getty merger is the fact that it will deprive the country of the benefits of a fully integrated vigorous major oil company with its own domestic crude reserves and an active exploration program. The FTC order will replace it with an independent refiner and a group of marketers who will be unable to compete because all of the key domestic crude streams will be controlled by majors. The merger puts more domestic crude oil into fewer hands and lowers the incentive for exploration and development by Texaco. It is drilling for oil on Wall Street.

The State of Kansas may wish to consider the following steps:

1. Communicate your concerns about the FEC's actions to Senators Dole and Kassebaum and ask that they hold immediate hearings on the FTC's inadequate response to the Section 7 issues in Kansas. You and the Governor may wish to participate in those hearings.
2. Present formal and informal objections to the proposed consent settlement to the FTC. This presentation may be made with or without oral argument before the Commission. In my judgment, a request for oral argument should be included inasmuch as direct participation by Kansas would be more effective. We can, of course, assist you in the preparation of this intervention material.
3. Request Senators Dole and Kassebaum to join in the formal and informal presentations to be made by Kansas to the FTC and Texaco.
4. Inasmuch as the arrangements have a regional competitive impact, you may wish to assemble a group of Attorneys General to make a joint presentation to the FTC and to make any litigation a joint matter.
5. After the refusal of the Judge to grant the Temporary Restraining Order in *Fairlawn Oil Services,* Texaco agreed to meet with the concerned parties in the case, including the Attorneys General who were involved. Dennis Roberts of Rhode Island, now a party to the case, will certainly meet with Texaco. You may wish to call him and participate in the meeting. Of course, a separate meeting can be arranged.
6. You may wish to either intervene as a party plaintiff in *Fairlawn Oil Services* in Rhode Island or file a separate suit in Kansas and move to have your case consolidated with *Fairlawn.* The State of Rhode Island is aleady an intervenor in the case and the State of Pennsylvania has filed a brief amicus.

It is our belief that the merger violates Section 7 of the Clayton Act. In the Marahon/Mobil merger cases, *Marathon Oil Co.* v. *Mobil Corp.,* 530 F. Supp. 315 (N.D. Ohio 1981), aff'd, 669 F.2d 378 (6th Cir. 1981), cert denied, 455 U.S. 92 (1982), involving the same industry, the same product markets and similar geographic markets, smaller market share percentage increases were held illegal. If this merger is fully litigated, it can be prevented. The problem may be that full litigation is not prevented. The problem may be that full litigation is not possible because of the cost and the resources it would involve.

For your information, we have included a copy of the FTC papers which you may have not yet seen. If you have any questions, please call.

Senator KASSEBAUM. Thank you very much. I would certainly say that, General Stephan, you have outlined all of the things that do trouble us and reassurances that we believe are important. Let me ask you, however, in a change on the consent agreement, Texaco would have to agree to that change. Is that not right?

Mr. STEPHAN. Yes.

Senator KASSEBAUM. Do you see this as being a problem perhaps even for prospective buyers to be so tied down to these things that there is little flexibility?

Mr. STEPHAN. Well, the problem, as I see it, is that if you try to sell a refinery and do not include the necessary entities or necessary facilities to operate that refinery, you are really not selling very much. And it—just from my perspective, and this example as pointed out in Washington, D.C., by Jack Blum, our Washington counsel, and I thought it was very appropo, it is like selling the car without the engine. If you are going to sell an automobile, you have to include the part that makes it run, and that is the concern I have with the refinery. You have to include the engine to this refinery. In talking with some of the Texaco officials in Congressman Glickman's office, the gentleman there was jumping all over himself to assure us that that is exactly what they wanted. Then we got a letter that I didn't think said that. You know, it is awful nice to say one thing and write another. All I can say is every time I turn around, I understand Texaco wants to maintain competition, they want to maintain a viable refinery in El Dorado. All I am saying is put it in writing and I think we're a lot better protected.

Mr. GLICKMAN. Senator, can I just comment on one——

Senator KASSEBAUM. Yes.

Mr. GLICKMAN. I think that the history of the oil business, especially the greatly integrated majors, indicates that refineries are to a large extent, the least productive asset, at least in the minds of these majors. If what has passed is prologue, if history provides any guidance, many of these refineries which claim to be valuable assets may not be here for very long, particularly as the nature of the oil market changes.

Just as a point of interest, the Texoma situation could dramatically change the viability of this asset. So obviously we're caught in a bind here between having a consent decree that is so inflexible that nobody may want to buy it and having it so loose that once they do buy it, they can do whatever the heck they want with it. I think we need to provide at least some guidelines so that they are convinced that they have all of the necessary aspects to make this car run. I do not think we can force them to actually drive the car, but I think we have to make it so palatable for them that they may not have any choice.

Senator KASSEBAUM. But if those are written assurances in the consent agreement, do you not think that has provided a structure there that could cause potential damage to any obligation of the buyer's future market? We all believe these are important and indeed, Texaco says so.

Mr. GLICKMAN. I cannot speak to every one of the items that the General talks to, but there are a few items that need to actually be in the consent decree. And that is we have to define viable operations better. After all, that does not bind anybody to anything unnecessary. We have to insure that there is a continuing obligation to run the refinery during the entire 30-month period of time and give Texaco the option to continue to run the refinery if they cannot in fact sell it. There are some things that I think could beef it up in the event that it cannot be sold.

Senator KASSEBAUM. Within the 3-year period of time?

Mr. GLICKMAN. Within the 30-month period of time. But at the same time, we are between a rock and a hard place here. Texaco has told us, they told Attorney General Stephan and me, they would love to keep running this refinery into perpetuity. They will not guarantee how long they will run it. They said, we like it, it is profitable, it is environmentally efficient, it is modern, good employees and all the positive things that you could say. But, they said the Federal Government will not let them run the refinery because they say it violates the Clayton Act. So they are making them spin the refinery off. And I guess my only point is that we have got to insure as best we can a viable, operating entity for as long a period as we can.

Senator KASSEBAUM. We will have Texaco here to testify in just a few moments. So we can ask them those questions as well.

Mr. STEPHAN. Senator Kassebaum, may I inject one other item here. I think it is important that I point out that there is no way the Congress of the United States can guarantee that any company is going to continue its business operations or presently continue those operations or can force a company to keep operating it today or 10 years from now as it operates today. I can appreciate that. And I do not think anyone expects that. For example, there was no way, as Congressman Whittaker pointed out, for the Government to tell Mobil that they cannot close the refinery at Augusta. The bottom line is, though, when you do have a merger of this kind to at least make sure that there are components in that merger that will allow a company to exist or a refinery to exist, if the company so desires, and that is one of our main concerns.

Senator KASSEBAUM. I would just like to ask one more question of Congressman Glickman. Because you were speaking of the antimerger legislation and there has been a lot of talk about this legislation that has been introduced in both the House and Senate now, which does exclude, as a matter of fact, the Texaco/Getty merger, what if there had been antimerger legislation in place when Getty was wanting to sell, what would have happened to the El Dorado refinery under those circumstances?

Mr. GLICKMAN. It would depend on who they want to sell it to. That is the big point.

Senator KASSEBAUM. I can think of some people that might not have wanted to even consider this refinery.

Mr. GLICKMAN. I would say this, you know Senator Johnston, your colleague from Louisiana, has legislation to put a hold on this for a while, let us just cool it for a while and try to determine——

Senator KASSEBAUM. But it doesn't include this.

Mr. GLICKMAN. Even the legislation I sponsored probably would not include this because it has already made it through the process and it would not be prudent to do something retroactively. I cannot answer that question. If Getty wanted to sell to one of the big eight or big nine under my legislation, it would have been prohibited. I am just saying that we have a trend in this country that is not healthy, a trend that Theodore Roosevelt saw, when he spearheaded the Clayton and Sherman Acts, was not useful, that is to have excessive concentration in industry. I don't want to see it happen in the future.

These are complicated issues, I grant you that, but, you see, they are not that abstract in this case. Here we have a situation where the antitrust laws on the one hand prevent Texaco from continuing to operate this refinery in perpetuity. Maybe it would be better for the people in this area if Texaco were able to do that, but on the other hand, you see a situation where the Federal Government is making a merger which violates the law into one that does not violate the law. That is a very disturbing proposition to me.

Senator KASSEBAUM. What would have happened if that had gone to court, which it would have done under the Clayton antitrust legislation, it would have gone to court?

Mr. GLICKMAN. That is——

Senator KASSEBAUM. The FTC's role is to examine things as if the merger has taken place. This was not a forceful takeover. Getty was for sale and Texaco bought it. At that point the FTC, I think, does rightfully have a responsibility to point out where there would have been a violation.

Mr. GLICKMAN. But you see, you were not at the meeting with us. If you go into the data base, the FTC claims to be the omnipotent power in deciding what is violative of the law or not and what involves excessive concentration or not. When Attorney General Stephan repeatedly questioned them in that meeting about how Kansas producers were going to get crude oil supplies after this occurred, their general response is, "Well, we know the antitrust laws better than anybody else, do not bother us." I am just saying that I am not telling you now that this merger might not in some instances be of some help to some parties. I am just saying not all the facts are in. It is not fair to give the FTC carte blanche authority to decide what is best for the people in this part of the country.

Senator KASSEBAUM. Congressman Whittaker.

Mr. WHITTAKER. Thank you, Senator.

Mr. STEPHAN. May I inject one other point here? I am sorry, Congressman. I hate to interrupt. Just let me say that I look at the FTC as a judge in effect. Rather than go to court to settle this matter, and the courts can either prevent a merger or cause a divestiture or other remedies, so that it is not clear cut. The important part is to maintain the competitive aspect. That is why the FTC has drafted the consent decree. The problem is does that do the best job possible to maintain competition, and I think that needs to be looked at.

Mr. WHITTAKER. General Stephan, I understand that the Texaco/Getty merger has been challenged in court. I am wondering, if that is true, if perhaps, you could review the status of that litigation and its impact on a potential challenge by your office.

Mr. STEPHAN. Well, there is a case certainly on file in Rhode Island, and a temporary restraining order was requested. I am going to try to relay it as best I can, a little of the background. The suit was filed by an independent oil company in that area of the country. The judge denied the temporary restraining order because no irreparable injury could be shown if it was not issued at that time. The judge did not rule upon an injunction. That can be taken up after the final decree is issued, and indeed that is why I believe that a period of time after the final decree is necessary so that it can be studied and a study decision made on what to do from there. Generally I believe that if it looks as if it would be appropriate for the State of Kansas to proceed with legal action, that there are not sufficient protections in the final consent decree, then I would think the best way to proceed would be to try to intervene in the case in Rhode Island.

Mr. WHITTAKER. Thank you. In our meeting, Attorney General Stephan, of last week, the FTC staff indicated a willingness to sit down with your office to review perceived problems with the current consent decree. Have such discussions begun, and if not, do you intend to initiate them?

Mr. STEPHAN. Indeed there has been discussion with staff members of the FTC, and we intend to pursue those discussions. I was just in Washington last Thursday evening and discussed some of my concerns with a member of the FTC staff. And our Washington attorney, Jack Blum, has done the same. Hopefully we will have a better understanding than we had at the hearing.

Mr. WHITTAKER. My next question——

Mr. STEPHAN. You know, that meeting was interesting. You know everything would have calmed down at that hearing very quickly if the FTC gentlemen, fine people, when they were asked if they just wouldn't sit down with the attorney general, Texaco and the FTC and the three of us all sit at the same table, if they had just said yes, I think everything would have been calm, but they did not, and it was not calm, but it is getting better.

Mr. WHITTAKER. My next question could really go to either one of you gentlemen, but I would just like to ask you, and then either one of you who might choose could address it. Do you see that there is a possibility that an extension of the comment period might generate more uncertainty to a potential buyer who may fear substantial modifications of the consent decree and thus be discouraged from coming on the scene and purchasing the facility; in other words, do you believe that an extension of the comment period might delay a sale, or do you feel that the risk might be well worth it?

Mr. GLICKMAN. My judgment is if the asset is good and if it is a viable, operating entity, an extension would not delay its sale. This is a very substantial asset. I think its value is in excess of $100 million. If somebody is going to buy it, they are going to buy it, even with an extension for 30 days, if they think it fits in with their operation.

I guess my original reason for thinking we ought to have an extension is that assuming that the FTC would not go ahead within the first 60 days and put in some of the language that both General Stephan and I talked about, clarify viable, operating entity and some of the other requirements. Even Texaco said that they are willing to live under it, even Texaco said that they are willing to put it in the consent decree. The other reason I talked about the extension is I do not think the FTC's done their homework on the issue of concentration. They talked quickly about the fact, well, no one oil company has more than 7 percent of the market in this country. That may be true, but in this part of the country, one company may have 65 percent of the market. And I think that they chose to perhaps rely on very general and old antitrust statistics which are not particularly relevant. That is one of the reasons why I said you need to do your homework on this particular region of the country before you can decide what is competitive and what is not.

Mr. **Whittaker**. Dan, since you are the representative for our neighbor here to the west, could you speculate on the impact of the proposed merger on Wichita specifically and on the refining industry in Wichita and other parts of the State?

Mr. **Glickman**. I cannot specifically. I know that Wichita, of course, is concerned. A lot of the people, independent oil and gas producers, are concerned about the fact that they may not have the extent of the market to sell their crude oil as they did before. There will be less competition for that crude oil, and, therefore, the price that they might receive might go down, and the same thing is true with product, gasoline, which there would be less competition for. I can only speculate in an abstract way.

Senator **Kassebaum**. Thank you very much. I know both of you have to be in Wichita shortly. Let me first ask, would there be a couple of questions from the audience before they leave this panel? Thank you. There is one.

Unidentified Speaker. The question keeps coming up as to whether this recommendation by our State Representative is too restrictive and would keep a buyer from buying the refinery and associated facilities. If that is, why has not somebody come forth that is—I mean if there is a buyer that is willing to buy it the way it is, why has it not been publicized and aware of it and this kind of discussion going on? I don't see any of that indication.

Senator **Kassebaum**. You mean of the requirements that they are making?

Unidentified Speaker. Yes; if there is a ready buyer for it as it is without the crude oil, why is not that buyer made public so that we can see that there is such a buyer?

Mr. **Stephan**. Let me answer that in two ways. First, we do not know of a buyer at this point. I have been told there are a lot of interested buyers. I asked, give me the name of one, I cannot get it. Somebody knows something they do not want to tell anybody about. Maybe that is because of price and that kind of thing. You have got two kinds of buyers in the marketplace, you have got buyers that want you to keep the facility ongoing, then you got one that wants to scrap it. We want to try and make sure that when there is and if there is a buyer, an interested buyer, that we will have a facility that can be kept in operation.

Senator **Kassebaum**. Thank you very much. I very much appreciate your being here and wish you a good safe journey.

Mr. **Stephan**. Thank you, Senator.

Senator **Kassebaum**. The next panel, the El Dorado area State legislators: Senator Gaines, and Representatives Green and King. It is a pleasure to welcome you here. When I saw Representative Green earlier this morning, he said that he thought maybe bad weather was following us, because when they were in Washington

Thursday, last Thursday it was, a terrible storm hit the Washington area and forced them to stay overnight. It was a very useful meeting that Congressman Whittaker called and we are very appreciative of those from El Dorado who came back.

Senator Gaines.

STATEMENTS OF FRANK D. GAINES, SENATOR, 16TH DISTRICT; KENNETH W. GREEN, REPRESENTATIVE, 75TH DISTRICT; AND KENNETH R. KING, REPRESENTATIVE, 77TH DISTRICT, KANS.

Mr. GAINES. Senator Kassebaum and Congressman Whittaker, thank you so much for the invitation to appear here today and offer testimony on the tentative order by the Federal Trade Commission allowing the merger of Getty Oil Company, the Nation's 14th largest, by Texaco, the Nation's 3d largest.

I presume, Senator Kassebaum and Congressman Whittaker, in your respective positions on the Commerce Committee of the Congress of the United States of America that you have two paramount responsibilities, and they are; to wit: No. 1, to determine whether or not laws such as the Clayton Antitrust Act are in need of modification or change; and No. 2, to oversee the Federal Trade Commission who supervises commerce nationwide to make sure that they are fairly and equitably enforcing the laws of this land guaranteeing competition between large business enterprises.

I submit, Senator and Congressman, the Clayton Act passed in 1914, the days of Teddy Roosevelt, and as amended in 1950 is a good law and has served this Nation very well and is in no need of modification or change. I further submit that the Federal Trade Commission, the very committee you oversee, is ignoring this law and allowing the Nation's 3d largest oil company for $10.1 billion to buy 1 billion barrels of crude oil from the Nation's 14th largest. It will in my opinion deprive this country of the benefits of a fully integrated, vigorous major oil company with its own domestic crude reserves and an active exploration program. The FTC order will replace it with an independent refiner and a group of marketers who will be unable to compete because all of the key domestic crude streams will be controlled by major oil companies. The merger puts more domestic crude oil into fewer hands and lowers the incentive for exploration and development by Texaco. As stated in the Wall Street Journal, it is drilling for oil on Wall Street.

At the outset, the Federal Trade Commission openly admits that without divestiture, it is a violation of section 7 of the Clayton Antitrust Act. To clean up that which is already admitted to be unlawful, they then put into effect some machinery which provides in a so-called divestiture order that Texaco is given 12 months to sell the refinery and other assets as a viable entity and at the expiration of the so-called 12 months, the court trustee will be appointed who will be given 18 months to sell the assets of the so-called viable company to some third party approved by the Federal Trade Commission. From that point on, the order totally fails and no provision is made and I am led to assume that then Texaco will be allowed to call the junk dealers and sell the refinery and other related assets for scrap iron. This is simply to say on the part of the Federal Trade Commission that they are going to allow something which is unlawful at the outset to become unlawful at the end in the event no third party comes forward to buy the refinery and other related assets as a viable concern.

Senator Kassebaum and Congressman Whittaker, I wonder why the Federal Trade Commission didn't simply state in any consent order that we will allow you to merge at such time as you have divested the assets of Getty Oil Co. in conflict with your own to other third parties. It is no secret that Getty Oil Co. owned the controlling interest in Skelly Oil Co. and allowed Skelly Oil Co. to operate in its own corporate structure for a period of more than 5 years before it was finally taken into and became a part of Getty Oil Co. It seems to me only reasonable that as long as a violation of the Clayton Act exists that Texaco should be required to allow the operation of Getty Oil Co. as a viable entity with Texaco being the largest single stockholder.

Senator and Congressman, the operation of a major diversified oil company is like a column of dominoes. If one is allowed to fall, the entire column goes down. In concert with that point, I cannot emphasize strongly enough how important it is to get into detail all the matters necessary to protect the parties concerned in this merger. We have been given Texaco's assurance that the backup crude pipeline from the port in Texas to Cushing, Okla., will be sold as part of the package. A map showing that pipeline is attached to my testimony.

This pipeline was built in 1975 and 1976 as a result of the oil embargo occurring. It is 30 inches in size and capable of carrying 600,000 barrels of oil per day to Cushing, Okla., in the middle west, at which point there are many pipelines available for distributing the oil. It is called the Texoma pipeline with Getty owning 30.1 percent of it. Other partners are Texas Eastern Tosco, Kerr-McGee, Rock Island Refining, Total, Sun, Mobil and United Refining.

I learned yesterday afternoon that a contract is now being circulated to sell this line to Houston Natural Gas for $140 million to be used as a natural gas line. I submit to both of you that the pipeline involves actually the Nation's security. I know Texaco will say we have no control at this time over Getty Oil Co. I point out to all of you that Getty as an entity has never been a party to any of the Federal Trade Commission orders, they were never signatory to any of those orders. On page 5 of the order to hold separate, Texaco is required by the word "may" rather than "shall" to protect the assets of the Getty Oil Co. as a viable concern. Simply stated, Getty will be allowed to go ahead and sell the line and put $39 million in the bank later to be given to Texaco. I am sure that Texaco will in no way object to such an event occurring, and there is not anything on the part of the Federal Trade Commission that requires Texaco to stop such an act from occurring.

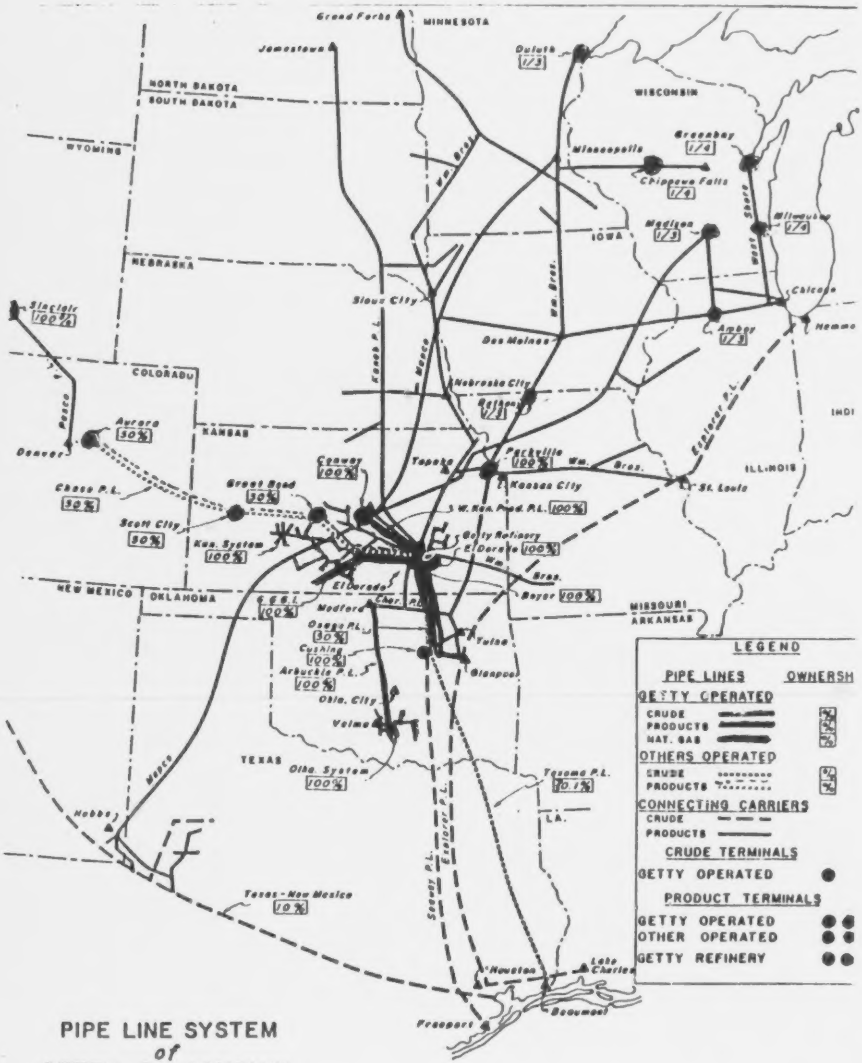
I will further point out to you that this is the backup line in the event of another oil embargo to all independent refiners in Oklahoma and Kansas, and it will include such companies as Derby, Pester and Total.

You were present the other day in Washington when a number of us saw the events unfold wherein the attorneys for the Federal Trade Commission were questioned about whether or not an economic impact study had been conducted prior to the entry of the tentative order allowed by the Federal Trade Commission. I think you would have to agree, based upon what you observed, what you heard and what you saw, that it was very obvious no study of any kind had been done whatsoever about the effects of allowing this merger to occur in Kansas and the Middle West. I cannot help but believe that you left that meeting with the same concern that I express to you here today.

From our perspective in the legislature of Kansas, we have signed off on this whole program and we have turned it over to the Kansas attorney general as general counsel for and on behalf of the people of Kansas. He has done a good job for us and we are going to support him in any way that is necessary, including, if necessary, furnishing the necessary financial resources to litigate this matter in the Federal Courts of the United States of America.

Now, finally, in closing, I will say to you, Senator and Congressman, the Governor called me at home at 8 o'clock this morning in Topeka. We were iced in, they would not let the State's plane fly. He said that my remarks relating to the attorney general and the remarks relating to the legislature of Kansas are the remarks of the Governor's office. I thank you very much for being given the opportunity to appear here today.

[The map referred to follows:]


Grand Forks
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Jamestown
Duluth
1/3
NORTH DAKOTA
SOUTH DAKOTA
WISCONSIN
WYOMING
Greenbay
1/4
Minneapolis
Chippewa Falls
1/4
Madison
1/3
Wm. Bros.
West Shore
Milwaukee
1/4
IOWA
NEBRASKA
Sioux City
Chicago
Hammo
Sinclair
100%
Des Moines
Amboy
1/3
Kaneb P.L.
Wm. Bros.
COLORADO
Nebraska City
Bethany
1/3
Pasco
Aurora
50%
KANSAS
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Denver
Explorer P.L.
Conway
100%
Topeka
Parkville
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Wm. Bros.
ILLINOIS
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Great Bend
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St. Louis
Scott City
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S.W. Kan. Prod. P.L.
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El Dorado
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NEW MEXICO
OKLAHOMA
C.G.G.L.
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Baker
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MISSOURI
ARKANSAS
Medford
Osage P.L.
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Tulsa
Cushing
100%
Arbuckle P.L.
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Glenpool
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Velma
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Mapco
Hobbs
Texas-New Mexico
10%
Seaway P.L.
Explorer P.L.
Houston
Lake Charles
Beaumont
Freeport
LEGEND
PIPE LINES
OWNERSH
GETTY OPERATED
CRUDE
PRODUCTS
NAT. GAS
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OTHERS OPERATED
CRUDE
PRODUCTS
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CRUDE TERMINALS
GETTY OPERATED
PRODUCT TERMINALS
GETTY OPERATED
OTHER OPERATED
GETTY REFINERY

PIPE LINE SYSTEM
of
GETTY OIL COMPANY
and
AFFILIATED COMPANIES

Senator KASSEBAUM. Thank you very much, Senator Gaines. I think we have a statement, or you do, of Governor Carlin's that will be made a matter of record.

Mr. GAINES. That is correct, Senator. He advised me this morning that he would mail it to your Washington office for the record. Thank you.

Senator KASSEBAUM. Thank you very much. Representative Green.

Mr. GREEN. Thank you, Senator and Congressman Whittaker. It is a pleasure to be here this morning to testify in regards to the Texaco and Getty merger. In relation to the position I sit in, is a unique position because I do in some sense of the word represent a refinery and have been in it for some 30 years. So I am in a unique position as an elected official from the legislature. Pester Corp. did not have time to deliver a statement or be asked to testify at this hearing this morning, but, Senator, we do have Pester people in the audience that will answer questions if so desired.

I am very happy to have the opportunity to make a few remarks in regard to the Texaco/Getty merger. I have been giving this a lot of thought of the question which has no good answers. I am concerned for the merger because I have little trust in Texaco keeping the refinery running since I am a labor person. Having worked with these companies for over some 30 years, I feel that they did not give any consideration for the people at all. Working as a legislator, I will have to look at the whole problem because of the tax paid by the refineries. If there is a shutdown, they would not have any revenue coming in to operate the State, the schools and the community college.

I think there have been a lot of unanswered questions that should be cleared before the deadline and it becomes a merger. I hope that the FTC will change that time that Texaco will have to divest the refinery and its holding in Kansas.

The FTC will state in their decision that they will furnish crude oil to the new owner for at least 10 years, that the pipeline will not be sold off so that it might shut down Pester refinery. This is needed for the operation of the refinery, that the refinery be sold to someone who intends to run the refinery and the subsidiary, such as the chemical unit and the LP gas storage at Conway, the transportation department for the delivery and also the loading facilities for local consumption.

I would hope that the FTC will look at the effect on El Dorado and the State and the economy of 15 other States. This will have an effect on the national income, on the welfare, unemployment. Thank you for the opportunity to appear before you at this hearing on behalf of the people in Butler County and the State. Thank you.

Senator KASSEBAUM. Thank you very much, Representative Green. Representative King.

Mr. KING. Yes; we appreciate very much, Senator Kassebaum and Congressman Whittaker, you holding these hearings in Butler County. We are very pleased that we are having an opportunity to make our comments on the Texaco/Getty merger. We are convinced that the sale of the Getty refinery will have a very negative impact not only on our area but on all of Kansas. The consent agreement, which orders the sale of the refinery, does not speak to the supplies of crude oil and natural gas now being used. Without these resources, the refinery would have to seek other suppliers and be forced to pay higher prices to remain operational. In either case, the lack of crude and gas or higher prices for supplies could cause the shutdown of the refinery.

As you know, Getty is a major supplier of refined products for the Midwest and especially Kansas. In Kansas, agriculture is a very major user of these products such as diesel fuel. If the supply from Getty was not available to the farmers of Kansas, they could be forced to pay an additional 4 or 5 cents a gallon for fuel, an industry already hard hit with the cost-price squeeze.

On March 8, we met with the FTC officials in Washington. This was the meeting set up by Congressman Whittaker. It was very clear from our meeting that no study regarding the impact of the Getty refinery sale had been conducted as to its effects on Kansas. If they had, the FTC's mission to protect the consumer would have resulted in a guaranteed protection for the continued operation of the refinery, thereby reducing the possibility of unemployment and higher prices.

The FTC consent agreement needs to guarantee crude oil and gas supplies for an extended period of time. I respectfully ask that this be a part of the agreement of the parties involved in the merger.

Attorney General Stephan has officially presented the State's position on the consent agreement as it affects the El Dorado-Getty refinery. Mr. Stephan has the total support and the backing from the Kansas Legislature. Any agreement worked out with him will be acceptable to Kansas. I say this to make clear that the State of Kansas is represented by the attorney general. Thank you.

Senator **KASSEBAUM**. Thank you very much, Representative. Congressman Whittaker.

Mr. **WHITTAKER**. Thank you, Senator. Senator Gaines, do you believe that adequate safeguards for continued operation of the El Dorado refinery might be secured from either or both the FTC or Texaco so that legal action to block the merger by suit or injunction may not be necessary?

Mr. **GAINES**. Congressman Whittaker, I think Representative King said it very well. If they can satisfy the attorney general, the counsel of the people in Kansas, they have satisfied me. It is going to be very, very complicated to do it. I will go back to my house of dominoes testimony again. You know, the parties can very cleverly leave one domino out and topple the one domino and the whole column go down. It is difficult to do, I believe it can be done.

Mr. **WHITTAKER**. Representative Green, as a representative not only of Pester refinery but as a working member of the profession itself, how forthcoming has Texaco been with the employees of Getty in guaranteeing employee benefits under the consent decree?

Mr. **GREEN**. Well, this is like I said in Washington, D.C., I wonder why they are changing some of the benefits around when the decree has not been accepted, when we are still in the question period. This bothers me why they are changing some of the share plans, the concerns of the pension plan. The concern of the people is on the early retirement agreement. If you remember, I asked if the 2-year contract would be enforced and it could be enforced by Texaco but not some other buyer. This is a concern of the people.

You do have people in this type of operation, and they get to worrying about it and they get going. As you know, we can make a statement at some point down the road are looking at retirement the first of next month. This is bothering me as far as representing people. And when it comes to this type of deal, there is no coverage there. This is what I mean in my statement here, that the people were not concerned because the sale is talking about Getty and the merger. It did not say anything about the people, and this bothers me.

Mr. WHITTAKER. Thank you.

Senator KASSEBAUM. I very much appreciate the three of you taking such an active role and of course it very much affects your family, and friends, and acquaintances here, perhaps even more than ours. I think that we must be conscious of the ripple effect throughout Kansas as well. It is not just this area. It is of tremendous impact on this area. That is not to be ignored. I do not wish to be the defender of the FTC in this or of the Texaco/Getty merger, but I think sometimes we tend to forget in this particular instance, Getty wanted to sell. Would they have been better off if Pennzoil bought Getty? I think we have got to realize we have two concerns here.

Mr. GAINES. Senator, if I might attempt to answer that question. The scenario with Pennzoil and Texaco is a subject of the American Trial Lawyers magazine, and it is one of the most intriguing stories ever read. Without getting into that, let me make this point. The very thing that Texaco and Getty's being allowed to do was attempted by Mobil in the case of Mobil and Marathon Oil Co., and a Federal judge was sustained by the Circuit Court of Appeals in the Sixth Circuit in the United States of America. A Federal judge ruled against Mobil and Marathon. They wanted to merge together, they wanted to join together. The events in that particular case are not nearly of the magnitude as they are in this case.

In 1982, they tried to get that case before the U.S. Supreme Court, and it was denied certiorari by the U.S. Supreme Court.

What the Federal Trade Commission is allowing Texaco and Getty to do, I do not believe there is going to be a Federal judge anywhere in this country allow to happen if it is litigated. It is going to cost a lot of money and it is going to take a few years. That is the best way I can answer it.

On the Federal Trade Commission, there was a minority report that was handed down in that case, it is a very scathing thing about the attitude of the entire Federal Trade Commission today, and it is worthy of your time to study it.

Senator KASSEBAUM. I think that we are all concerned about mergers at this point. Whether it is the oil industry or the steel industry, it is taking a look at the whole merger issue that is of concern. But the Texaco/Getty issue is before us right now, and I think I would, as I said in my opening statement, tend to believe that what we have got to be involved in is making sure that it goes forward in a positive way. I do not think it really serves us well to try and embroil it in too many legal battles or extensions of time. We must make sure that we have got in place something that is going to make it a salable property and allow it to continue to be run. That is what we are all investigating at this point.

Mr. **Green**. Senator, what bothers me as to light years ago when it was in the hands of ElReCo and then Fina came in and bought it. They bought it straight outright and bought the employees with the situation. We lasted about 17 years and then Mr. Pester came in and bought Fina and there was a guarantee of crude oil there for *x* number of years, plus the bias program. If you will remember, we went to Washington, D.C., to talk about that. This was bought with the employees, it was not a merger like this. If Texaco had come in and bought El Dorado refinery from Getty Oil Co. plus the employees, et cetera, et cetera, et cetera, I would not have any problem with it. When you come in with a merger that says you got to divest this, this, this, and it bothers me because the northern Pester refinery hinges right with this agreement here. He does not have any crude oil, he depends on these two lines here. We go with no crude oil but Getty refinery. We are going to have another Pester on the south side that has to buy crude oil on the open market. I know, being associated with Pester, what we have to go through with buying crude oil on the open market, and what the price, and what the cost is. That is an up-front cost, that is not down here, that is an up-front cost. This is what bothers me, if there is no crude oil at this refinery, we are going to have one on the north and one on the south that is depending on the open market out here. This bothers me because they cannot revert back at a low operation as we can out here. They have got to run a maximum through this refinery. They have got to buy this at minimum prices. It just bothers me. If Texaco were to say we would buy this refinery straight out, no merger, no divestiture, and took it over, I would not have felt as uneasy as I am today.

Senator **Kassebaum**. Thank you very much. Now, the Federal Trade Commission has its turn. It is a pleasure to welcome Ron Rowe, Assistant Director, General Litigation, Federal Trade Commission. We very much appreciate your coming out. Glad you made it in to participate in the hearing this morning. Obviously, having been at the hearing in Washington last week, you fully understand the concerns of the people in this area, and we welcome you here this morning.

STATEMENT OF RON ROWE, ASSISTANT DIRECTOR, GENERAL LITIGATION, FEDERAL TRADE COMMISSION

Mr. **Rowe**. Senator Kassebaum, Representative Whittaker, members of the El Dorado community, the local representatives of the government, I am pleased to be here this morning. I hope I cannot be accused of bringing bad weather in addition to some other problems that El Dorado is having.

First of all, let me say just a little bit about what I am doing here today. I am not here as a representative of the Commission or the Federal Trade Commission's views on this particular merger. I will tell you why. The Commission is essentially a representative body of people selected from different political parties, and they have staggered terms, and the Commission is a collegial body. There is no one point of view that can prevail at the Commission the way it is set up. As Senator Kassebaum and her colleagues know full well from their oversight responsibilities with the Commission, we are an independent, regulatory agency, one that is largely responsive to the needs and concerns of the community of the United States.

But we have a fairly limited mandate. Our mandate essentially is to enforce the antitrust laws on the one hand and to protect consumers from fraud and deception on the other. When we enforce the antitrust laws, we look also to the consumer. We try to enforce them in a way that avoids the consumer being harmed by higher prices and restrictions on output, the bottlenecks in supplies and the difficulties that all that causes.

I am here today, as I said, not to speak on behalf of the Commission. The views that I offer, the remarks that I offer are as the FTC staff member in the Bureau of Competition with responsibility for enforcing the antitrust laws with respect to energy mergers. I am here also today to listen. So many of my remarks you are going to hear are not going to be very polished. They are not going to be prepared comments that I will be able to read, and so I hope you will forgive me for this extemporaneous and sort of off-the-cuff nature of my remarks.

What I have been trying to do over the last couple of weeks, as I did last week in the meeting with representatives from Kansas and the congressional delegation concerning El Dorado, is to listen and to be educated, and I have had a short time to do that. I hope you will forgive me for that. We have been quite busy over the last month or so looking at a couple of mergers that are rather large and specifically with the Texaco/Getty matter. We are presently looking at the SoCal merger and other mergers.

Also in the past I was responsible as the Commission staff member for making recommendations and enforcing those recommendations according to the commission's decision, in both the Mobil/Marathon acquisition and the Gulf-City Service attempts.

I have heard some conversation here this morning and some serious concerns that I think I would like to respond to, and of course I encourage you to ask any questions and interrupt me any time that you feel that that might be appropriate. But in looking at those mergers, those acquisition attempts, the Commission has a few remedies available to it. Like I said, we are an independent agency. We have laws that we enforce, but the Commission does not have plenary or absolute power to command the enforcement of those laws. The reason for that is because the FTC, to enforce the laws that it administers, must go into Federal court on occasion. And when you go into Federal court in our adversary system, the judiciary, you are put in a position where you are in a win-or-lose situation. You offer your best case, the other side offers their best case and someone wins. Now, in two previous mergers that my office looked at and I was responsible for, Mobil/Marathon, and Gulf Cities Service I recommended to the Commission, and they unanimously adopted my recommendation, that we go into Federal District Court and seek preliminarily to enjoin those mergers. Concurrently, in Mobil/Marathon however, there was a private action seeking the same relief. A preliminary injunction was granted in that case.

Nevertheless, the Commission went into court because it was concerned that when a private party acting as private attorney generals seeks to enforce the antitrust laws, that there is a possibility that the interests that we seek to protect of the rights of the consumer may not be fully addressed. For that reason, we went into court.

The judge was not required to rule on our petition in that case because, as was pointed out ably here earlier by others, that the private action was upheld, the preliminary injunction was granted and all appeals to remove that injunction were denied. As a result, however, Marathon was purchased by the United States Steel Corp. And so it is operated by United States Steel today.

Second, when the Gulf/City Service merger was attempted, again we looked at that matter and again finding serious anticompetitive problems, we recommended that the Commission go for a preliminary injunction in Federal district court. The Commission unanimously again adopted the staff recommendation. And we filed action in Federal district court in Washington before Judge Ritchey, and obtained a temporary restraining order for 10 days from Judge Ritchey. Before we came on for hearing in that case, while we were preparing our case for trial, Gulf withdrew from the merger and so no further action was required.

Here in looking at the Texaco/Getty matter, we again had those choices to make in a short period of time. We had a cash tender offer, which under the Hart-Scott-Rodino Act, the statute that gives us the right to examine the merger and acquisition before it is consummated, we had only in essence 30 to 45 days to make a decision whether to go into Federal court.

We saw some overlaps that concerned us, particularly we found four product markets and three geographic markets, two product markets in the Northeastern United States; we were concerned with the Colonial pipeline overlap; we were concerned with the refinery overlap. We were very concerned with the overlap between the Chase and the Wyco pipeline. Senator Kassebaum, I thought very ably, described very succinctly the competitive problem presented by that aspect of the acquisition. And we were concerned with the situation in California with an impact on refineries which had made very heavy investments in very heavy, cheap crude processing equipment for which they had no decent alternative, the impact that failure to get that crude on a continued basis would have on the viability of those refiners. Now, I mentioned that specifically because later on I am sure questions will come about and I will get into the question of crude access on the part of the El Dorado refinery.

But I have heard some discussion in the meeting last week, and I must apologize that we were not able to address the concerns of people in the congressional delegation. I feel that was a shortcoming on our part. I wish that we could have done a better job of that. But frankly, it is very difficult for us in the short period of time to understand all of the ramifications of these mergers when we get them.

What we thought we saw, however, was a serious overlap in the Colorado market, and knowing generally refinery and marketing concentration in the Midwest and in various States, we saw the competitive problem was likely to be in Colorado for refined light products. However, we were very concerned over whether you could just sell an interest in a product pipeline that runs into that area and have a viable divestiture. When we discussed this situation with Texaco, we felt that they shared our view. I must say this, that in coming to a decision to make a recommendation to accept for provisional acceptance the consent order with respect to the Chase-Wyco situation and the El Dorado refinery package, that Texaco, we thought, negotiated in good faith, that there was an interest on their part in making sure that the package which would be offered to a purchaser eventually would be sold as an ongoing unit, a viable unit. What that means to us at the Federal Trade Commission is that it is an effective, capable competitor, for our interest is in maintaining competition; and competition in the marketplace can only be maintained if the assets or the package that is being divested here continues to operate as an effective competitor.

So I think that our interests in the Commission and your interests here are pretty much complementary and the same.

We had to make a decision in a short time, again, as I say, whether to go into Federal court. We had done it twice before. But, however, it became clear to us very quickly that we would be able to obtain relief by negotiation in a consent order, which in many ways, because the certainty involved was superior, far superior to the risk of litigation where you must go before often harried Federal judges who have very busy criminal dockets. And believe me, the criminal dockets with the Speedy Trials Act makes it very difficult for a Federal judge to dwell upon the intricacies of an antitrust case. We thought that a consent order which we worked out and satisfied our concerns was the best alternative of the alternatives that we had to recommend to the Commission.

However, in making that decision, we presented the Commission not a fait accompli or the people of El Dorado a fait accompli. What we did is offer the Commission a range of alternatives. We said you can go for preliminary injunction action, if you want to, we have got the papers, we can make the arguments, we can go into court, or we can do nothing because perhaps you are not concerned about the merger, or we can give you this consent order and, by the way, a hold separate order which will maintain the assets separate and apart and assure their continued viability for divestiture if you choose that alternative. The Commission very carefully deliberated on those alternatives and chose to provisionally accept the consent order with Texaco.

Now, outside, as you go out, you will notice on a table, there is a large pile of Federal Register notices. I would like to show you one of them. It looks like this, in case you haven't seen this already. You ought to take one when you go or when you find it convenient because it sets forth the entire Federal Trade Commission consent order. It has all the provisions, it has the hold separate order and it also has an analysis to aid public comment.

I call this a provisional consent order because under the Commission's rules when we enter into a consent order, we do not want to foreclose the possibility that we have made a mistake; and also again, when we make these recommendations and the Commission provisionally accepts these consent orders, the Commission is not necessarily satisfied with what we have done. The Commission's a very hard task master, I can tell you that.

The Commission expressed many of the same concerns that I have heard here today. I assure you the Commission will take a very hard look at this consent order and the provisions that have been worked out here over the next 60 days. For that reason, the Federal Register notice points out comments and request, this is the next to the last page, and the Commission wants your comments on whether or not this particular divestiture, the divestiture order worked out by the staff, will solve the problems and also has the purpose and the intent, whether it does a good job, of preserving competition and assuring the continued viable operation of the El Dorado refinery and those assets.

Again, the Commission wants to hear from you. We will very carefully examine that public record at the end of the period of time. We will very carefully take the views and comments of the public back to the Commission so they can make a final determination.

Now, I have heard some discussion about the possibility of a lawsuit to address perhaps the anticompetitive concerns. Again, my judgment, based upon my limited experience in this area on what happens with a lawsuit and the chances you take, you should know, and it was suggested there were several private actions, antitrust actions. I do not think any of them have been successful. Pennzoil tried in several different jurisdictions. Although it has a contract suit, which may in some form be alive, the antitrust suits, as far as I know, are mostly dead. That is not to say that if we were to go into court that we would not ultimately have been successful. It is a risk. There is risk in litigation.

We thought the things which we got in hand and the consent order trying to do our job on behalf of the American people was the best that we could get, especially under tight supervision and the opportunity for modification and the Commission's oversight over the operation once divested. I will go into that a little bit.

There has been some suggestion, I heard some good questions about if we were to somehow undo the process or change the process. The Commission as an agency has established rules and regulations and those are required to be published in the Federal Register. The Commission cannot make rules for special cases. They cannot change its rules and do that very effectively. When you do that, you open yourself up for court action in which you throw yourself into a sort of never land where procedures that are odd or designed for particular circumstances may be overturned. What we are doing here is we are abiding by established Commission procedures that have been tested over time and have been constantly oversighted by the Commission.

A 60-day public comment period is simply an examination of the provisional consent order so the Commission can be advised. As far as extensions are concerned, let me tell you this. The 120-day hold separate order we thought was as valuable in terms of the provision as the consent agreement itself. This requires Texaco to hold those operations separate and apart and viable for 120 days so that if we decide that further relief is required, the Commission has preserved its options in court. We can go into court and we can seek to extend the hold separate order or we can seek to have some other injunctive relief. All of our rights to that under section 13B of the FTC Act, the injunctive rights in court are preserved.

I would like to dwell a little bit now on what we have done with the order. What is referred to as the schedule A assets, which essentially comprise the refinery, the related assets, and the distribution system, the crude inputs in terms of the transportation system, the terminals, the ownership of various pipelines, gathering systems, and so on and so forth. We again do not have in hand all of the particularities of how that would work in every event with particular buyers being offered for Commission approval. But once an order is final, once a divestiture order is final, then the Commission's compliance oversight goes into effect, and that is taken very, very seriously. If you read the Federal Register notice, you will note that Texaco takes on very stringent obligations with respect to reporting to the Commission in certified statements. We have all of our rights under law. We can go, we can serve subpenas on them, we can take their testimony, we can go in and look at their documents. We have all of our rights to assure ourselves that nothing funny is happening with those assets. I have no reason to believe that anything funny is. Again, if that concern is there, we have the tools and the machinery to address that concern. The Commission takes that very seriously.

The Commission maintains a separate compliance division of people whose job it is to make sure the Commission orders are fully complied with and they are not evaded, either in spirit or in law. That is a very important thing that you should be aware of.

I want to mention that in context with the idea that it makes sense right now to try to fasten onto the consent order some particular required or assured crude supply. The order does not mention assured crude supply, but we take a rather broader view of the obligation of Texaco; and that is, the obligation of Texaco is to make sure that this operation is sold as a viable, ongoing, effective competitor. We do not believe, in view of the fact that Getty presently gathers crude locally from a number of independent crude operators, that it brings in its own crude or has in the past and takes crude from others with its extensive sophisticated gathering system, crude storage terminals and pipelines that assured crude supplies will be necessary. We think that Getty is going to be an attractive package for anyone to buy. We think that it offers some unique features in terms of distribution of product in the areas that it serves. We have talked with Texaco. They assure us that that is true. They assure us that their attempts to find a purchaser will very stringently take that into mind.

Let me go to this point. If, after all that fails, we become convinced that something else is required, the Commission can take steps to try to modify those requirements. Now, again, if we were to do it now before the consent order is accepted by the Commission, it would require us going back and negotiating with Texaco. That may eventually be required. The Commission may desire it, but it is not absolutely sure that it is a good idea at this point simply because Texaco has an obligation to divest this refinery as an effective, ongoing concern, as a competitor. Any purchaser which will buy this will undergo also very tight scrutiny as to what their intentions are. They will be required to file reports explaining in detail how they will operate this facility, what they will do with it, where they intend to get the crude, how they will get the crude, and they will have to satisfy the Commission that they can do all of those things or else the Commission will not approve the divestiture or particular acquisition.

Another point that I would like to mention, there has been some discussion about the Texoma pipeline, and I am not really aware of the specifics of that. I have heard some of those concerns mentioned today. We have a statute, the Hart-Scott-Rodeno Act, which I mentioned briefly, which obligates everyone making a substantial acquisition, purchase of assets, or stock over a certain amount of money, to file a premerger statement with the Federal Trade Commission. I am somewhat constrained in my ability to speak on specifics of Texaco/Getty and other oil mergers and any future ones today because there are very tight confidentiality requirements wisely placed on the Federal Trade Commission by Congress with respect to particular acquisitions presented for review. But, hypothetically, I can tell you that if what I heard is correct about a proposed sale of the Texoma pipeline, that would have to be presented to the Federal Trade Commission for its prior review before it could be consummated. That is my understanding.

Again, I hope that my remarks here today have answered many of the questions. I have tried to listen to what was said and I tried to direct my remarks toward that. I will be glad to answer any questions from the Senator, and Representative, and from the audience. Thank you.

Senator **Kassebaum**. Thank you very much, Mr. Rowe. You have touched on several questions that I had down I wanted to ask. But I would like to ask a couple that in some ways you have touched on too. What happens if no buyer is found within the 30-month period of time?

Mr. **Rowe**. If a buyer is not found, and again we are speaking hypothetically, so it is possible to see several different scenarios under which that will happen. I do not think frankly it will happen from what I have seen. If it should happen, if Texaco should be at fault, the Commission goes into court. We have done it before. We go into Federal court.

Senator **Kassebaum**. What exact guidelines will you have to know when Texaco would be in default?

Mr. **Rowe**. We would know because of the stringent reporting requirements that Texaco has. They have to keep us constantly advised as to the progress of divestiture. They have to report to us on the state of the assets and the operations.

Senator **Kassebaum**. That they are actively out marketing this property?

Mr. **Rowe**. That's correct.

Senator **Kassebaum**. And they are doing that now?

Mr. **Rowe**. That is a constant assurance.

Senator **Kassebaum**. In your opinion.

Mr. **Rowe**. Yes.

Senator **Kassebaum**. You did mention, of course, the supply of crude, but I guess I have to wonder and would ask you again, with FTC's desire to try to put together a package of assets that would be very saleable, why did you leave out what is really the lifeblood of a refinery, and that is the crude supply and assurance of that supply?

Mr. ROWE. Let me answer that question by saying that in negotiating the consent order, we felt that the competitive problem was with the Chase and Wyco pipeline. When we traced that pipeline back, and discovered the refinery, and all the related assets, an immediate question came into mind as to whether or not the crude supply would be a problem. Based upon our admittedly truncated investigation because we didn't have a lot of time to do this, we received assurances from our inquiry that crude was available, would remain available for the foreseeable future at market prices for that refinery.

Senator KASSEBAUM. You received those assurances from whom?

Mr. ROWE. From our investigation, from looking into the facts and asking the question of various people, including Texaco and Getty.

Senator KASSEBAUM. Well, do you want to follow up?

Mr. WHITTAKER. If you have received those assurances, why are you not willing to put it in writing?

Mr. ROWE. Perhaps my use of the word "assurances" is not well chosen. When I say "assurances," I don't mean promises. But we examined the availability of crude oil and the extents of gathering, where Getty presently gets its oil. Right now they do get a substantial amount of oil from their own reserves.

Senator KASSEBAUM. About, what, 60 percent?

Mr. ROWE. It is more like 50 percent. I think that what they get is a large amount of oil locally gathered. The oil that they are getting, which is a very substantial part from their own reserves, it is our understanding that it will continue to be offered to Getty. It is my understanding that Getty will continue to get the oil that it presently gathers now.

Mr. WHITTAKER. Mr. Rowe——

Senator KASSEBAUM. Could I just follow along with that?

Mr. WHITTAKER. Certainly.

Senator KASSEBAUM. Do you think Texaco would be willing to address those assurances?

Mr. ROWE. I cannot speak for Texaco, but my belief from talking with them and what our options are and what we are likely to do, if we cannot be assured that that refinery would operate as a competitor is that they would ultimately provide assurances that it will.

Senator KASSEBAUM. In the consent agreement?

Mr. ROWE. In the consent agreement, I still question whether that is necessary. The Commission may ask that it be inserted, and in that case we would have to go back to Texaco.

Mr. WHITTAKER. Mr. Rowe, it has got to be apparent there is a difference of opinion over whether the availability of the feedstock source as well as the crude oil source is adequately addressed in this consent decree. There are very informed participants in this discussion, both local and national, that contend that they are not. You have reassured us, based on your expertise, knowledge, and data, that they are. However, I think you must understand that until we have received those assurances, there is going to be a great deal of apprehension about forging ahead with this merger. If it is so confidently assumed by your office that this is not a problem, then I would suggest that this hearing would be an excellent avenue for you to give some assurances to us, based on your data, which would not jeopardize the merger in your opinion, that would do a great deal to assure us that the concerns we have have been addressed.

Mr. Rowe. I understand that, Mr. Whittaker. As I said, I am here to listen and report back to the Commission. However, I cannot give you any assurances. I do not carry any seal for the Commission with me. I cannot make that decision. They have the ultimate decision that they will make after they look at the public comment and listen to these concerns.

Mr. Whittaker. You have absolutely no doubt, though, from where we are coming?

Mr. Rowe. Yes, it is very clear. You are very articulate here in El Dorado, Kan.

Senator Kassebaum. Why does the proposed consent agreement not require the sale with the refinery of the natural gas supply and pipeline.

Mr. Rowe. It is my understanding that the intention is that the pipeline does go, the feedstock lines do go with the refinery, will go. It is my understanding also there is some question as to whether or not the consent agreement actually mentions the asset and whether it should, and whether it should have made that specific mention. It is something we are looking at very carefully now. It is my understanding from my staff talking with Texaco, that presents no problem.

Senator Kassebaum. So that could be clarified?

Mr. Rowe. That could be clarified, yes.

Senator Kassebaum. In the consent agreement. And I have a couple more. Do you have——

Mr. Whittaker. Go ahead.

Senator Kassebaum. In response to some of the questions earlier, I would like to know, Mr. Rowe, what your opinion would have been as far as what would have happened if you had taken Texaco to court.

Mr. Rowe. I cannot say. I listen to people making predictions as to what would happen when you go into court, but I have sat at those counsel tables. I have watched different Federal judges react to what they see in front of them. You can never anticipate what will happen. I feel confident that if we had gone into court, and this is going to require some explanation, we would have won if we had gone into Federal court. We could have gotten a preliminary injunction.

However, the Federal Trade Commission has used its 13B authority 12 times in the last several years. It has brought these preliminary injunction actions 12 times. It has prevailed on the merits six times. It has only got preliminary injunctions four times. The reason for that is that the law, the case law, talking about the remedies in those cases, do not view a preliminary injunction as the automatic remedy when you go into court under 13B. If a lesser remedy is advisable, the court will grant that. That means a hold-separate order.

In one situation, the FTC went into court, asked for a preliminary injunction. The judge said, why would not you people be just as happy with a hold-separate order. That is acceptable to me. I think that is a good idea. That is what I am going to do, and he ruled from the bench. So we got a hold-separate order.

A hold-separate order is a second-best remedy, but it was the remedy that we got. If we had gone into court, we would have taken the risk that we might have gotten a victory on the merits but relief that was not as effective as we think the relief that we have gotten in this divestiture order.

Plus I have to mention also, in addition to that, we got the hold-separate order to try and maintain the separate viability of these assets.

Senator KASSEBAUM. What, for instance, would have been the protection that FTC could have given if, say, United States Steel purchased Getty as they did Marathon? What would be the FTC's role at that point in trying to provide some protection for the refinery? Would there have been any?

Mr. ROWE. Well, they would have had to have filed a statement, my understanding, preliminary premerger notification with the Commission.

Senator KASSEBAUM. Or any other purchaser. I am just using Unites States Steel.

Mr. ROWE. I know of no antitrust concern that would have been presented and no way for the Commission to become involved in that at all.

Mr. WHITTAKER. Mr. Rowe, we have heard testimony today that the Texaco/Getty merger is illegal, that it violates the Federal antitrust laws.

Mr. ROWE. I agree.

Mr. WHITTAKER. You answered my question. In the proposed consent order, the FTC alleges that an overlap exists between Texaco and Getty in the petroleum product pipeline ownership in Colorado, of particular concern to us, the Chase pipeline. Could you explain to the committee how the FTC arrived at its conclusion to divest itself of both the pipeline and the El Dorado refinery in order to address the pipeline problems? I am curious as to what experts the Commission called upon to determine that it was necessary to combine the two in order to make the pipeline viable. Did you receive any testimony from Getty/Texaco or any other competent parties?

Mr. ROWE. Well, let me describe the decision process a little bit first. Indeed we were concerned with the pipeline overlap because of the concentration for a combined refinery, light products, pipeline transportation market in Colorado. There are only four pipelines going into that market, and there were very few refineries in that market. Those refineries are insufficient to manufacture the product that is required. So the pipelines coming in there provide most of the supply that is evident in Colorado. Of those pipelines, the four pipelines, two of them are rather small. The two larger pipelines, the Chase and the Wyco, were respectively largely owned by Texaco and Getty. The purpose of the pipeline: it doesn't run from Denver backward to the refinery. It runs from the refinery to that market, and so a pipeline running from a refinery with no connection between the ownership and all of the terminals, the offtake, the distribution system would not be an effective package. We came to that conclusion from talking with Getty, with Texaco, from talking with various refiners, and in talking with people who are familiar with the dynamics of the way a pipeline distribution refinery system operates. There just seemed no feasible way.

First of all, also, we could require the divestiture of just the partial ownership of the pipeline. That would have left the pipeline also owned by the other major company, I believe Koch, who owns the other share in the Chase. But just owning a half of a pipeline with no distribution system, no marketing, and nothing to put in the front end of it just seemed to us to be sort of a pyrrhic victory. We couldn't see what that would settle at all.

Mr. WHITTAKER. Mr. Rowe, it appears to me that you are expressing a great deal of concern about the Colorado market. We love our neighbors to the west, but we are carrying a burden for that concern here in central Kansas. I think you need to be aware that that concern is extremely genuine and very sincere.

Mr. ROWE. Mr. Whittaker, I think that you all have articulately expressed those views. We very strongly share those views.

Senator KASSEBAUM. We are pleased that this is a record for the hearing, that you can take those comments back with you to the FTC, including all of the assurances that we have had and the fact that we feel the Getty refinery here is a very valuable asset. It is disquieting I think to all of us not to know for sure exactly what is at stake, and that is why it has become so very important.

Mr. WHITTAKER. May I make——

Senator KASSEBAUM. Excuse me.

Mr. WHITTAKER [continuing]. One additional comment. Mr. Rowe, I am sure that you probably appreciate the considerations that both Nancy on the Senate side and I on the House side have with our oversight responsibility. However, we have a dual responsibility of seeing how this totally develops. It is going to be our concern not only as Kansans, but residents of the area, as well as members of our respective Commerce Committees to see how well you follow through on your premises.

Mr. ROWE. We appreciate that.

Senator KASSEBAUM. There are some questions from the audience. I would just like to ask one further one. Will there be a public comment period on the proposed sale?

Mr. ROWE. Yes. When a proposed purchase passes scrutiny to go to the Commission, if it is provisionally presented to the Commission, there would be an additional comment period for the members of the public to present their views on any particular divestiture proposal.

Senator KASSEBAUM. OK.

UNIDENTIFIED SPEAKER. Senator Kassebaum asked the question after a 30-month period, if Texaco is unable to sell the refinery and the trustee for the FTC was not successful in selling the refinery, what happens? I may have missed the answer, but I did not hear.

Mr. ROWE. Like I said, it was—it is very difficult to respond to a "what if" ultimate question. I mean several scenarios present themselves. If it proved impossible to sell this refinery during that period of time or if we decided that even litigation would not force the divestiture of that refinery as an effective competitor, I, for one, would go back and make a recommendation that we consider whether or not divestiture is a good idea.

Senator **KASSEBAUM**. And be willing to take this to court if necessary?

Mr. **ROWE**. I would be willing to take this to court if I thought there was a good chance that the divestiture was being thwarted.

Senator **KASSEBAUM**. OK. Another question there.

Mr. **CANNELL**. Thank you, Senator Kassebaum. Ray Cannell. Mr. Rowe, my home is El Dorado and we are very concerned about the outcome of this divestiture. I was in Washington when Attorney General Stephan asked you whether the FTC would be willing to sit down with Texaco representatives and the State of Kansas representatives and see if we could not put in writing some of these assurances that the FTC is working under. Do you have any objection to the FTC working with the Kansas representatives and the Texaco representatives to get those assurances in writing?

Mr. **ROWE**. I think that General Stephan addressed that. We have had conversations with the General, and we share his concerns. The problem essentially is that we have a provisional consent order for public record comment now. That cannot be altered during the period of time. If the Commission decides that it does not want that consent order at the end of the 60-day period, it can decide not to accept it, it can direct the staff to go back and further negotiate a new order. That does not mean that we cannot have discussions. We can talk with anybody at any time.

Senator **KASSEBAUM**. Thank you. I think that now we will take a 20-minute break. Let me say that we will collect comments and questions that have been written in the back, if anyone has them ready right now. The student union is open with snacks if anyone would like a snack, and we will be back here and start exactly in 20 minutes. Thank you. [Recess.]

Senator **KASSEBAUM**. The hearing will come to order and we will get started on the second part. It is a pleasure to welcome as witnesses at this point Mr. Lester Amidei, vice president, Getty Refining & Marketing Co., El Dorado, and Mr. Jim Seamans, vice president, Texaco, Inc. Mr. Amidei.

STATEMENTS OF LESTER A. AMIDEI, JR., GETTY REFINING & MARKETING CO.; AND JAMES M. SEAMANS, TEXACO, U.S.A.

Mr. **AMIDEI**. Thank you, Senator and Congressman. I am Lester Amidei, Getty Refining & Marketing Co., vice president of manufacturing, central region and manager of the El Dorado refinery. I appreciate the opportunity to provide information about the refinery and our El Dorado operations.

As you may know, operations at the El Dorado refining site began in 1917 after William G. Skelly built a facility to process crude oil obtained from the El Dorado field. The physical facility changed considerably over the years as technology advanced and processing methods improved. Operations were conducted under the Getty name beginning in February, 1977, when Skelly Oil Co. was merged into Getty.

Today the El Dorado refinery with a rated crude oil capacity of 80,600 barrels a day is the largest operating refinery in Kansas. Our 1983 actual operating expenses totaled $105 million, most of which was spent in Kansas, primarily on such items as utilities, maintenance, and labor. We employ about 525 people at the refinery with an annual payroll of approximately $18 million.

Over the last 5 years, we have spent an average of $12 million a year on capital improvements to insure that the refinery remains competitive in the region it serves.

Virtually all of the crude oil, natural gas, and natural gas liquids used as refinery inputs come from domestic sources. Most of the refinery's raw material is purchased from others or traded for Getty production in other regions in accordance with common industry practices that improve the delivery logistics. The balance comes from Getty production.

The El Dorado refinery processed 69,700 barrels per day of crude oil in 1983. About half of this amount came from Kansas fields and was delivered primarily through Getty's crude gathering system. About 31,000 barrels per day was West Texas crude, and approximately 4,000 barrels per day came from Oklahoma. The Texas and Oklahoma crudes used in the refinery were transported by various gathering and trunk lines to the Cushing terminal in Oklahoma and then to El Dorado via the Osage pipeline.

Natural gas processed at our El Dorado facility is primarily Kansas gas and is delivered through the Getty gas gathering system. The gas liquids we process, about 15,000 barrels daily, come from our Conway, Kans., facility, which stores liquids produced in Kansas and other producing States.

About 60 percent of the El Dorado refinery ouput, or approximately 50,000 barrels per day, consist of gasoline. Middle distillates, primarily No. 2 fuel oil, make up another 28 percent. We also produce coke, propane, and various petrochemicals.

Although the refinery is very energy efficient, the amount of energy consumed in producing these products is still significant. In 1983, we purchased about 216 million kilowatt-hours of electricity and 10.7 billion cubic feet of natural gas. The natural gas is processed to recover propane and other light petroleum products. The bulk of it remains as gas and is used as refinery fuel.

The physical disposition of most of the refinery products is accomplished primarily through pipelines that transport product to the midcontinent area. For example, an average of about 47 percent of the gasoline produced at the refinery is delivered into the Chase pipeline, which serves mainly the western Kansas and central Colorado markets. About 35 percent goes to the Williams pipeline, which serves primarily the upper Midwest, and about 10 percent is directed into the Kaneb pipeline, which runs through Nebraska and up through the Dakotas. The remaining 8 percent of gasoline is shipped by truck from El Dorado.

Because of various purchase and exchange agreements we enter into, the volume of product manufactured in the refinery and delivered to a particular area does not generally coincide with our sales of branded product in that area.

Generally, three-quarters of our central region gasoline and distillate products sales are attributable to independent marketers, including jobbers and dealers who use the Getty trademark and marketers who sell under their own trademark. On the average, about 25 percent of our gasoline and distillate products are sold through company-owned marketing outlets.

I think it is evident from my discussion of raw material input and disposition of product that the El Dorado refinery is geographically well situated. We are connected to the pipelines that run from the oil-bearing regions of Kansas, Oklahoma, and Texas, and we have access to distribution systems that serve major marketing areas in the midcontinent. The refinery also is one of the more complex facilities of its size in the country, capable of handling crude with a wide variety of characteristics.

In addition, we consider the refinery to be an efficient facility, thus enabling it to be a competitive supplier of petroleum products. I think this is indicated by the fact that our capacity utilization rates at El Dorado have averaged about 90 percent over the last 5 years, compared with the industrywide average of 75 percent.

In short, we believe the El Dorado refinery and its associated facilities should remain a viable business entity for many years to come. Thank you.

Senator KASSEBAUM. Thank you very much, Mr. Amidei. I think, Mr. Seamans, we will go on to you and then we will have questions.

Mr. SEAMANS. Thank you, Senator Kassebaum, Congressman Whittaker. We are happy to be here today to discuss with you and the people in this area the Getty/Texaco merger and the subsequent FTC consent order. What I would like to do initially with my prepared remarks is to kind of address what I consider to be several very key points. Many of these have been covered in some of the discussions preceding us, but perhaps we can present those to you in the light that Texaco views them and in the light of what commitment Texaco intends to follow as a result of this merger and the consent order.

First of all, and long before the Texaco/Getty merger was consummated, as had been brought out, the differences between the Getty management and its major stockholders had made it extremely likely that Getty's structures would be in fact altered.

Getty initiated the merger offers with Texaco, and the Texaco/Getty merger is a friendly union. The merged companies in our opinion actually bring many benefits to shareholders of both companies and indeed to the Nation.

The FTC reviewed the process, and the consent order in our opinion again provides the maximum guarantee that the El Dorado plant and its related assets will be sold as an ongoing business. Finally and most importantly, Texaco fully intends to comply with not only the substance but the intent of that order.

To elaborate just a little bit, in the recent years, I think as you all know, the management of Getty and its stockholders had some very major differences in company objectives. It was no longer a question as to whether Getty would continue unchanged. The real question at this point in time was how Getty might be reorganized and/or sold. During that period of time, the fate of the El Dorado refinery and all of these assets, as well as the rest of Getty, was indeed up in the air and uncertain. At that point Getty approached

Texaco to develop our interest in the acquisition. From the beginning, both companies maintained a strong sense of purpose with respect to the well-being of the shareholder, the employees and the communities that they served.

On January 8, as you all know, Texaco and Getty announced that Texaco would acquire the common stock of Getty through a tender offer. The net result was a friendly consolidation of the two companies without any of the difficulties that are frequently associated with this type of merger.

Obviously, and it is apparent here, subsequent to that announcement, there has been considerable discussion about the advisability of mergers of this order or magnitude. We believe very strongly that this merger is clearly in the public interest. These two companies fit extremely well together. The merger makes good economic sense, and it in fact brought to both parties exactly what both parties sought.

For the Getty shareholder, and we seem to overlook this point, they received a substantial increase in the value of their shares. For Texaco, Texaco received strengthened reserves to enhance its competitive position as well as a continued cash flow to support a viable exploration and development program, which in our opinion is equivalent to what each of these companies did prior to the merger.

Four courts reviewed this and judged that there were no antitrust implications. The FTC reviewed it in detail and the courts again. As you know, on February 13, the Commission preliminarily cleared Texaco's acquisition subject to two things. One, Texaco must divest certain domestic petroleum properties and must divest those in a manner as designated by the FTC; and the other condition is that there must be review of the comments filed on the FTC proposed consent order.

Now, during this period of time, of course, Texaco has to hold the Getty U.S. oil and gas production property separate, and that is for this 60-day period during which the final agency review takes place. But Texaco, nevertheless, at that point in time was cleared, cleared to acquire the Getty common stock and thereafter convert Getty into a wholly owned subsidiary. That has been done. Texaco now owns the stock, Getty is a wholly owned subsidiary. The merger is completed.

The only remaining step is for the FTC to review any comments filed on the merger and to grant their final approval to a proposed consent order. And I think again, as everybody here has pointed out, the key thing for us to consider is the fate of the El Dorado, Kans., refinery, the related group pipelines, transportation systems, marketing systems, which we will continue to refer to in our comments described under the Schedule A assets to be divested.

Again, I think perhaps we overlook the intent or the spirit behind that FTC consent order. The order provides, as I say, that that divestiture of property shall be made only to, and I quote their words, "acquirer or acquirees which receive the prior approval of the FTC." It specifically goes on to state that the purpose of the divestiture of the property is to ensure the continuation of these assets as, and I again quote, "an ongoing, viable, petroleum refining and marketing business."

Now, Texaco fully intends to comply with the spirit and intent of that order. We actually anticipate no difficulty in being able to do this. We believe that we can in fact sell these assets as an ongoing, viable operating entity, and we can do that because these assets within themselves are of a type and in a condition that they can and will exist in a financial atmosphere because of the efficiency and the basic competitive qualities which they have.

I think another key point here is that we talk obviously about guarantees, and I think it should be clearly understood that the way we interpret the FTC order, and it certainly is our intent to comply this way, is that Texaco has 12 months in which to effect or find a buyer. If Texaco is unable to do that, and we certainly do not anticipate that that is the case, then this trustee will be appointed, and the trustee in turn has 18 months in which he will find a buyer. Now, the important point I think in all of this, during this first 12-month period and the subsequent 18 months, although there was question here earlier as to what Texaco's obligation was during that period of time, Texaco has no problem with that obligation and in fact concludes and will operate these facilities throughout that entire period of time or until a buyer is acquired. So that the continued viable, operating entity is guaranteed through all of this, and really no further guarantees are required because the FTC and everybody else in the 30-day period in which all of you will have the opportunity to review the prospective purchaser, must agree that that purchaser meets the requirements of the sale, which obviously would also include such things as crude supply, and so forth.

When we talk about future crude supply, and this is obviously of great importance here, it has been brought up a number of times, we think also that one of the reasons we have such a good chance of selling this facility is simply because of the availability of crude which is here and can be delivered on an economical basis to the plant.

I would like to point out, Texaco buys crude to run its facilities. We do not have a flanged up or guaranteed crude supply. I think if you examine the business today, most refining marketers, although they may have some, certainly do not have 100 percent supply of crude. This whole country is dependent upon foreign supplies to the tune of some 40 percent, almost none of which are guaranteed or secured. I think everybody would like to have a guaranteed crude supply.

But this refinery is unique. It is on probably one of the best collection systems, which can take crudes from Kansas, from Oklahoma, Texas, all over the country, and has a wider variety of crude qualitywise and in greater volumes probably than most refineries in the United States.

Further, in our discussions with prospective purchasers, we have found that this is not of that much concern to them at all. I think any purchaser would like to have a guaranteed crude at a guaranteed price, but that is not of that much concern to them. I think it is premature to talk in terms of a guaranteed crude supply when we are not even dealing with the purchaser who in fact will probably not even insist that that be granted.

There is no reason to believe that Kansas crudes which are preferential to this plant on a transportation basis cannot and will not continue to compete on a very viable basis. As far as the balance of the crude that is necessary to run the plant there, it is adequate in our opinion, and it can be easily obtained by purchase and/or exchange.

We are also concerned that we maintain a posture, both here in a political climate, that is conducive to convince a buyer that he should in fact buy these facilities. If I may address my final comments, and then I want to digress a little bit and talk about two or three of the issues that were brought up here earlier today, but I would like to address my closing remarks to those issues.

Texaco of course has had a long-term interest in Kansas, and we have had a very good experience in Kansas, largely through our oil and gas exploration activities. We have had a good relationship with the State, we have numerous employees, royalty owners, shareholders and retired employees living here. I think what is a most important consideration for us here today is that we join with you, and I assure you we are ready, willing and able to do this, to make a cooperative effort on all of our parts to market the refinery exactly as it is to be marketed, and that is as an ongoing, thriving business. We will work with the employees, we will work with the community, we will work with the State to accomplish this goal which we think is clearly stated in the FTC order.

I would urge each of you here and all of you to help promote a desirable business climate which is going to be extremely important to a prospective purchaser. If we even threaten, as I think someone had brought out here before, that we are going to set up a business in which the crude supply will be dictated, the markets in which you sell will be dictated, the facilities that you have in the market will be kept and these all will be done for a period of 10 years, I can assure you, as good as we think we are, we will not find a buyer who will buy under those circumstances. We think it is necessary that we maintain that.

Now, if I may, let me address two or three other issues that came up today. First of all, I think it was brought out that the gas gathering systems and the ability to move propane to and from the plant to the storage caverns were a necessary part of, quote, this "ongoing, viable operation." Texaco agrees that that is the case. Although they were not listed in the scheduling assets, we had already begun to lay plans in our marketing efforts to work out what we felt would be the needed conditions for any prospective purchaser to have an assured supply of natural gas and be able on an operational basis to take advantage of the caverns for his underground propane storage. Texaco has no objection whatever if the FTC and/or anyone else chooses to put those into the schedule A assets. We will not disagree. We would certainly approve.

In our examination of this since the original consent order, I think those are the only areas. There may be a couple of very minor ones, but those can be handled without difficulty.

The subject of Texoma pipeline has come up, and indeed there are rumors which pretty well confirm that this pipeline is perhaps up for sale to someone who would use it for other than moving oil. And forgive me, but I cannot help but say this, I think Texoma pipeline is magnificent testimony to support the availability of crude to this refinery without any other additional sources. The reason Texoma is up for sale is because it is a grand, glorious financial loser. There are no shippers, there is no demand for any offshore oil or water-borne oil in the area because it is simply not necessary. There is more than enough oil in this area to support this refinery and every other refinery in Kansas. These other crudes can be delivered at a far lower cost than what you can ship through Texoma with the longer and more expensive transportation cost. So as a result, there are no shippers, the pipeline is losing money and its owners are obviously trying to divest themselves of a loser.

Getty is a major stockholder, as you know, in Texoma pipeline. Although it was said earlier here, and this is included incidentally in the schedule A assets, that Texaco could do nothing about that, we do not interpret that that way at all. Without arguing the merits of selling Texoma, because if you talk to me later about what we ought to do with it, it is not what I am going to tell you we are going to do with it. It is presently in the schedule A assets. We intend fully to comply with the intent of the order, and the order says that although we must hold all of these properties separately and not work with or discuss with Getty anything that relates to the majority of their operation, it clearly not only gives us the right but the obligation to discuss with them anything that is in the divestiture order. So we do conclude that we have the authority, and Getty has been instructed that when there is a vote on the sale of the Texoma pipeline, Getty will vote no. It will stay in the schedule A assets as listed in the FTC consent order. Again, testimony to our intent to comply strictly with the procedures involved.

With that, I thank you and I am more than happy, as Les is, to respond to whatever questions you might have.

[The statement follows:]

STATEMENT OF JAMES M. SEAMANS, SENIOR VICE PRESIDENT, TEXACO U.S.A.

Good morning Senator Kassebaum, Representative Whittaker; my name is Jim Seamans, I am a Senior Vice President with Texaco U.S.A., headquartered in Houston, Texas. I'm pleased to have this opportunity to discuss with you the Getty acquisition and the subsequent FTC consent order as they relate to the El Dorado, Kansas Refinery and its related assets. My remarks to you this morning will address the following key points:

1. The differences between Getty management and the major shareholders made it likely that Getty's structure would be altered;
2. Getty initiated the merger discussion with Texaco;
3. The Texaco/Getty merger is a friendly union;
4. The merged companies bring many benefits to the shareholders of both companies and to the nation;
5. The FTC review process and the consent order provide the maximum guarantee that the El Dorado plant and related assets will be sold as an ongoing business; and finally,
6. Texaco intends to sell the assets as an ongoing business.

GETTY WOULDN'T REMAIN UNCHANGED

In recent years the management of Getty Oil Company and its major stockholders had developed serious differences over the objectives of the company. There was no longer a question about whether Getty would continue to exist unchanged. The only real question was how it might be reorganized or sold. During that period the fate of the Getty refinery here in El Dorado as well as the related marketing assests, pipelines and employees was uncertain.

GETTY INITIATED A FRIENDLY MERGER

Getty approached Texaco to determine our interest in a possible acquisition. From the beginning, both companies maintained a strong sense of purpose with respect to the well being of their shareholders, their employees, and the communities they serve. On January 8, 1984 Texaco and Getty announced that Texaco would acquire the Getty common stock through a tender offer and a series of other contractual undertakings. The net result was a friendly consolidation of assets with none of the frictions frequently associated with mergers and acquisitions.

THE MERGER IS IN THE PUBLIC'S INTEREST

Subsequent to the announcement there has been much public discussion about the advisability of mergers of this magnitude. We believe that the Texaco-Getty merger is clearly in the public interest. The companies fit well together, and the merger makes good economic sense giving each affected interest group what it sought: for Getty shareholders—increased value for their stock; for Texaco—strengthened reserves to enhance effective competition as well as cash flow to support exploration and production; and for U.S. consumers—a continuation of competitive energy prices and stability of supply through economies of scale, and continuity in the management of energy reserves and delivery systems.

FTC REVIEWED THE MERGER

After four courts refused to block the merger, the Federal Trade Commission conducted an extensive inquiry into the anti-trust implications of the Texaco-Getty merger.

On February 13, 1984, the Commission, in a 4 to 1 decision, preliminary cleared Texaco's acquisition, subject to: (1) Texaco's divestiture of certain domestic petroleum assets in a manner designed by the FTC to advance competition, and (2) review of comments filed on the FTC proposed consent order. While Texaco is to hold Getty's U.S. oil and gas properties separate during the 60-day period required for final agency review, Texaco was cleared to acquire Getty common stock and thereafter convert Getty into a wholly owned subsidiary.

Texaco now owns the common stock of Getty Oil Company, and the merger is completed. The only remaining step is for the FTC to review any comments filed on the merger and to give final approval to the proposed consent order.

THE CONSENT ORDER

The key point for us today is the future of the Getty El Dorado Kansas refinery and the related crude pipelines and terminals along with their marketing, sales and transportation assets as shown in Schedule A of the consent order.

It is important that we recognize the spirit behind the FTC consent order. The order provides that divestiture of the property shall be made only to an acquirer or acquirers that receive the *prior* approval of the Federal Trade Commission. The order specifically states that the purpose of the divestiture of the property is to *ensure* the continuation of the assets as an "ongoing, viable petroleum refining and marketing business."

The consent order provides for a specific divestiture schedule and requires that "Texaco shall maintain the viability and marketability of the properties . . . .

The consent order, fully agreed to by Texaco, provides that the refinery and its assets be marketed as a viable and ongoing business entity. The intent of the Federal Trade Commission is clear.

TEXACO WILL COMPLY WITH THE CONSENT ORDER

Texaco fully intends to comply with both the letter and spirit of the FTC consent order. Our intention is now, and will remain, to seek a purchaser of the assets who is both willing and able to operate them on an ongoing basis. We have stated repeatedly our concerns and commitments in connection with the Sale of the System with respect to the consent order. Let me restate them here:

Texaco believes it will be able to find a reputable firm that is financially strong enough to purchase and operate the refinery. In fact, a number of substantial companies already have expressed a strong interest in purchasing these properties, which have been operated profitably by Getty.

We are highly confident that we will be able to sell the refinery together with the pipelines and marketing facilities that support it. It will be sold to a 3rd party who will continue to operate it as an ongoing refinery, transportation, and marketing entity. We commit to you that the sale will be consistent with all the requirements of the FTC Consent Order.

We believe that the consent order is also clear with respect to what happens to the refinery and related system if they are not disposed of quickly. Texaco has twelve (12) months from the date of the final order from the FTC to sell the system. During that period Texaco must operate the system. If a sale is not completed at the end of that period, a trustee will be appointed to make the sale. The trustee has eighteen months to do this, but this period can be extended. During the entire period after the first twelve months, Texaco will be required to continue to operate the system and we accept this responsibility.

Several other concerns have arisen relevant to the future of the Refinery. These include future crude supply arrangements and the potential impact on gasoline markets. We do not foresee problems in this area. Kansas producers will continue to have a transportation cost advantage over more distant producers. There is no reason why they should not continue to supply the plant's crude requirements at posted prices. With respect to the other crude requirements of the Refinery, we believe there are ample supplies available in the marketplace through purchases and exchanges.

Texaco is also publicly committed to providing continued supply arrangements with independent marketers, both branded and unbranded, currently receiving products from the El Dorado Refinery. We will attempt to ensure that any future operator of the Refinery continues these commitments.

The welfare of Getty employees is extremely important to us. The Merger Agreement specifically addresses employee benefits in a detailed, protective manner. I am supplying, for the record, copies of the pertinent parts of the merger document.

We are in the process of developing business plans and programs concerning the El Dorado Refinery. I will be pleased to provide you with facts and projected schedules on this matter. Likewise, every effort will be made to ensure that all employees are kept informed of important developments in the weeks and months ahead.

WE NEED TO WORK TOGETHER

Let me address my final comment to the community of El Dorado, and the citizens of Kansas. Texaco has had a long term interest in Kansas by virtue of our oil and gas exploration activities. We have had a good relationship with the State and have numerous employees, royalty owners, shareholders and retired employees living here.

The joint interests of the community and Texaco will be best served by joining together in a cooperative effort to market the refinery as a thriving business. Texaco will work with the employees, the community, and the state to accomplish this goal. I urge you to help engender a desirable business and community climate for potential buyers.

Thank you. I will answer any questions you may have.

Senator KASSEBAUM. Thank you very much. I would like to start off first with this question on the crude supply. Mr. Amidei, I think you mentioned in your comments that it is known that about 60 percent of the crude comes from the Getty-owned reserves. Is that right?

Mr. AMIDEI. About half of it.

Senator KASSEBAUM. I really find it difficult to understand why there cannot be some assurances now that Texaco will have those reserves. This has to be a very important part of an ongoing, viable operation, and it would seem to me that a buyer coming in is going to look at that and feel that that assurance of supply is absolutely crucial. That is a major part of the supply. Would you not agree?

Mr. SEAMANS. No, I do not. And again, because, now, as an old refiner and if I were to put myself in a position of being a potential purchaser of this plant, a crude supply is something that I on a day-to-day basis will acquire, swap, trade, buy and sell to maximize my profit potential. The quality is extremely important. The product demand for my refinery changes dramatically seasonally. It changes dramatically from year to year, and the quality of the crude in the ground changes dramatically.

Case in point, some of the most valuable crudes in the U.S. system, which were in the Texas systems, that were magnificent lube oil manufacturing crudes have changed to the extent they are not valuable for that purpose. So the crude quality and crude kinds and availability shifts constantly. The price shifts, the transportation costs shifts. This truly is, as you point out, one of the key ingredients in running a system profitably. By the same token, the absolute total flexibility will maximize your front-end viability or minimize your front-end costs and change quality to maximize the efficiency of your system, and to maximize is extremely important. Most people would not want to be tied to anything that was specific.

Senator **KASSEBAUM**. Well——

Mr. **SEAMANS**. I think just generalities——

Senator **KASSEBAUM**. I can understand that, but I——

Mr. **SEAMANS**. We will give you whatever crude supply you want in whatever quantity, kind, barrel, as long as you want or 10 years, it is just absolutely——

Senator **KASSEBAUM**. If you are a prospective buyer looking at this refinery and a major part of its assets have been that Getty reserve, crude reserve, would you not feel, while you may want flexibility to get your crude elsewhere, that at least you can count on those reserves which have been a major part of the refinery? I think that would be troubling to me as a buyer to not have some assurances.

Mr. **SEAMANS**. Certainly Les can comment on this also. Again, from our examination of these facilities in detail, the refinery in past years has indeed been profitable, and it has been profitable on the basis of acquiring crude at a posted price regardless of who owns it. I mean the accounting clearly demonstrates. You can acquire Kansas crudes and/or these other crudes at posted prices, including transportation, and it is a viable, profitable refining operation.

Senator **KASSEBAUM**. But they are Getty reserves, it is Getty crude.

Mr. **SEAMANS**. But you are acquiring them just as if you acquire them on the open market. In other words, Getty charges its refinery crude at the posted price, correct.

Senator **KASSEBAUM**. But might you decide you would wish to do something else with this crude?

Mr. **SEAMANS**. Yes. Now, from a practical standpoint, no one is going to move Kansas crude out of Kansas. Kansas crude is not going to be moved into the gulf, nor the east coast, for the very reason that it is not economical to bring crude in up the Texoma system. The availability of crude to these facilities in this proximity is the lowest cost crude supply. And it would not pay Texas, Oklahoma or anybody else to move those supplies out of Kansas. Obviously we do not share your concern in this area. We are much more comfortable with it. As I say——

Mr. **WHITTAKER**. Mr. Seamans, I am wondering if you understand that we are talking about backup supplies, we are not talking about a total 100 percent guarantee of crude. There is a tremendous difference between totally regulating the supply and just assuring or providing assurances for backup if it becomes necessary.

Mr. **SEAMANS**. Well, obviously this is something that we feel is not important to a prospective purchaser, and I would only say, when we talk about guarantees, you can tell from my comments, we are resisting guarantees very strongly. Nobody will guarantee our business. I certainly wish they would. But I still feel that the FTC order is in fact a guarantee because this must be an ongoing, viable, operating entity. We are dedicated to that concept. And if the buyer is not satisfied that he has a crude supply without difficulty, he does not meet those qualifications, then certainly he would not buy it.

Mr. **WHITTAKER**. Do you anticipate——

Mr. **SEAMANS**. Only if you fail to acquire a buyer under the current conditions I have described would that be a point.

Mr. **WHITTAKER**. Do you anticipate that a potential purchaser of the facilities will request a certain level of backup assurance?

Mr. **SEAMANS**. No, I do not, unless somebody offers it to him. If you offer it to him, I think he will, yes. But I do not think he will make it a condition of the purchase is what I am saying.

Mr. **WHITTAKER**. In all respect, Mr. Seamans, there seems to be a difference of opinion between you and Mr. John McKinley, your board chairman, who stated in my office, and I am sure to other parties involved, that he thought it would probably be in Texaco's best interest, in order to secure the very best price for the refinery, to provide those guarantees for a backup, even if they were superfluous.

Mr. **SEAMANS**. You have me at a great disadvantage. You picked the right one. I truly thought I knew precisely what Mr. McKinley had said, but perhaps not. Certainly our subsequent discussions have been along that stripe.

Senator **KASSEBAUM**. Mr. Seamans, if you don't believe that a backup crude supply guarantee is important, what is important in your point of view to a prospective buyer? What is the most important part of this that they will be looking at?

Mr. **SEAMANS**. Well, I hope that I am a realist. I think that any business survives for one single reason, and that is it is a business that can operate and compete in the markets in the climate in which it has to compete. You and I cannot legislate profitability, nor can we guarantee profitability by saying you must have a crude supply on the front end or certain products on the back end.

The thing that will insure the continued viability of the Getty El Dorado refinery and all of these marketing aspects is the way the facility is run and the physical condition that it is in and what it can do. We have examined it in detail, it is extremely efficient. In fact, I would go so far, I cannot make a positive statement, but certainly I think it is as efficient, if not more efficient, than any other refining marketing system in the State of Kansas in the market in which it serves.

It is my opinion that if any business in this line of business can survive, this is it, and that is what is guaranteeing and will continue to guarantee its viability to any prospective purchaser down the road. Although we might influence that short term with some kind of subsidies or guarantees, that is the only thing in the long run that will guarantee it. We are confident that that is exactly the case. That is why I am confident we can sell it.

Senator **Kassebaum**. What would happen after the 30-month period of time in your point of view if it is not sold?

Mr. **Seamans**. I could only speculate. I am sure we are going to do whatever the FTC at that point in time tells us to do. I feel, and I think that all our people all feel, that we have a continued obligation to operate the facilities just as Getty would or as we would our own facilities. I really cannot conceive that we will have that much difficulty in selling it.

As we said, we have had a number of discussions with a number of large financially sound companies who are indeed interested in acquiring the property. Any one of these could in fact, given the right atmosphere, proceed with the purchase.

Senator **Kassebaum**. Would not you agree that refineries are not exactly at the top of everyone's hot property list, and in fact there are some that really have been shutting down and going out of business, which makes it all more important, it seems to me, that if this is going to be finalized, if it is going to be viable, we may have to have some extra assurances to make it so at this time?

Mr. **Seamans**. Well, again——

Senator **Kassebaum**. I assume you really could not accept anything that the attorney general was suggesting.

Mr. **Seamans**. Well, I would have to look at his list again, but, you know, this is so important. If I may take a little more time and address the issue of the refining industry in the United States, and there has indeed been what we call a rationalization which flat means that about 15 to 20 percent of it has shut down, it has been shut down, employees laid off or otherwise terminated. Without exception, and this applies to Texaco, we have shut three facilities down. Each of these facilities shut down for the very simple reason that, one, the demand was not there to support this kind of refining level, but most importantly, because each and every one of these shut down was a refinery which was in a configuration and a posture that simply could not compete in today's market. I can assure you that, say, from the Texaco standpoint, that we looked at each and every one of these and said all right, now, this thing cannot compete, we have no demand for this amount of product. What do we have to do to make that competitive? And we looked at investment costs that were astronomical, and certainly there was no payout for those, so that where you could not economically modify the facilities to compete in the markets in which it had to market, then they simply shut down. That is true of every one of these all over the country. It is true of all of those in Kansas. I think Kansas has probably dropped back to a lower level of sound refining capacity than most every other State in the Union. I think at one time we had as much as 450,000 barrels a day crude refining capacity. I believe it is about 300,000 or something like that today. A larger percentage cut in this area than others, which again gives you a very sound economic base.

So that this refinery here meets all of the criterion I have described. The name of the game today is to be able to run a wide variety of crudes, crudes that have high sulfur, destroy all the bottom of the barrel, do not produce any fuel oil because there is no market for it. You give it away and you lose your shirt if you try to manufacture it. You have all the hydro-treating facilities which lower the sulfur levels to make it environmentally acceptable products and create an energy efficient and environmentally efficient plant. All of those things have been done.

I am tremendously impressed because as early as 7 or 8 years ago, the Getty El Dorado refinery was making these changes in anticipation of this type of market. So it does not meet any of those criterion which caused all of those other refineries to shut down. It is one of the survivors.

Mr. WHITTAKER. Mr. Seamans, in your testimony you referenced on three separate occasions that Texaco was quite willing to abide by not only the letter but the intent of the consent decree. Whatever the FTC would require of Texaco, you felt confident Texaco could comply with. Would you have any open resistance to complying, based on your assurances, if a backup supply were part of an amended consent decree?

Mr. SEAMANS. That is a very clever way. Again, Texaco in effect is underwriting this as an ongoing, operating, viable entity. When you got to that point, if there were no alternatives to it, Texaco again in complying with the consent order, the spirit and intent, would do whatever had to be done.

Mr. WHITTAKER. So the answer is yes?

Mr. SEAMANS. The answer is under those circumstances, it is premature to consider. We will do whatever has to be done.

Mr. WHITTAKER. In other words, yes?

Mr. SEAMANS. Yes; I sort of felt we would get to that point.

Mr. WHITTAKER. On a little less confrontational level, let me just ask, we understand that Texaco does have some dialog ongoing now with potential purchasers. Is this correct?

Mr. SEAMANS. That is correct.

Mr. WHITTAKER. Are you at liberty to tell us who those purchasers might be?

Mr. SEAMANS. No, I am really not, and from a couple of standpoints. I think earlier, I think privately, a couple were disclosed perhaps to you or others, but that I have not done. But, no, we are not because, one, until the order is final, you really cannot plan to come to any agreement at all. We, obviously, are going to attempt to proceed subject to FTC approval. But in addition to that, the prospective purchasers do not wish to have their names named at this point in time. I think a lot of it has to do with just competitive bidding procedures. They would prefer that others did not know who in fact at this point was bidding for the facility.

Mr. WHITTAKER. Are you at liberty to assure us that some of these purchasers are majors or is the majority of your discussion with parties that we might refer to as second tier oil companies?

Mr. SEAMANS. We have a number of people who are currently discussing with us, and we are sort of on hold pending resolution of a lot of these matters, who are certainly not a Texaco or Shell, for example, but are economically and otherwise of a size there is no question at all about their ability to not only acquire and buy and pay for, but to also operate.

Senator KASSEBAUM. I would like to ask a question that came from the audience. There have been a couple, and some I think have just simply requested that they be turned in to the FTC, but I think this is a very interesting one. It says, as a workingman's point of view, the most important issue concerning this transaction is what is to happen to the employees who have given every bit of their employable years to this corporation. Thirty-two years of dedicated loyal service should warrant total retirement benefits for life. If you give your all, then so should your employer. This is from not a Getty employee but the son of one who has spent his life as one. Take care of him as he did you.

Mr. SEAMANS. Well, obviously, this is extremely important to all, and there is no question about how important that is to the individual. In the consent order and as agreed to between Getty and Texaco, there are what in the industry have to be extremely liberal separation benefits for any and all employees who may be separated or even reduced in salary or position as a result of this combination.

Again, if I may now quote our chairman, Mr. McKinley, he has in fact said we will of course consider placing any and all of these nonrepresented people within the Texaco or the Getty/Texaco surviving corporation, and those who do not meet those criteria, of course, are under the consent order granted liberal separation benefits. Anyone who has 30 years of service of course has vested himself in his pension rights and, as you all know, under the Federal statutes and whatnot, that you do not lose those rights. You will retain them and obviously that will be granted either via a carryover to the new purchaser, which is possible, or ultimately paying the individual under the ERISA provisions. The represented employee of course is governed by a work contract. That contract will be followed.

Mr. WHITTAKER. I can help you with a direct quote from your board chairman if you would like on that.

Mr. SEAMANS. Please do.

Mr. WHITTAKER. In this case you are in close parallel. In his March 2 letter to a Mr. S. E. Peterson, chairman of the board of Getty, Mr. John McKinley, Texaco board chairman, wrote, "In order to provide a maximum range of opportunities for Getty employees, I have directed heads of Texaco operations not to fill existing vacancies until a thorough review of potential candidates for these positions can be completed." In followup the Senator's question, I would appreciate it if you could give us a little bit of assurance that the statement does represent Texaco's intent, where practical, to offer jobs to employees including those here in El Dorado if it should come to that.

Mr. SEAMANS. Yes.

Mr. WHITTAKER. Also, could you tell this committee how Texaco is progressing with its evaluation of the Getty employees and give us some estimates of how many, "existing Texaco vacancies," we are talking about.

Mr. SEAMANS. Yes. First of all, as it applies to the El Dorado refinery employees, for example, it applies to them just as it does everybody else. And again so that there are no misconceptions, the discussion you referred to, the intent and all certainly is to the nonrepresented group. This applies to El Dorado just as it does every other part of the system.

As far as our describing to you the openings that are available and/or how many, no, I cannot do that. We do comply with the spirit and intent of the law and the orders and everything else, we are absolutely, totally enjoined at this point in looking at anybody from that standpoint other than the assets and all that we are divesting. To be honest, we simply have not gotten into that to the extent that we can describe either part. It certainly is our intent, and we will do that. Again, I think I may even quote our chairman who had said very much the same thing in earlier discussions.

Mr. **Whittaker**. Following the sale of the El Dorado refinery, will Getty employees be given the option of taking jobs with Texaco or will they automatically be subject to a new owner?

Mr. **Seamans**. Again, as far as the nonrepresented employee, if that employee goes with the new owner, and we will certainly attempt to negotiate with the new owner to continue any and all of the benefits so that it does not relieve us of any obligation for that, then of course there would be no severance or other benefits required if the new owner agreed to pick it up and there was no reduction in force. But to the extent there is a reduction, then Texaco would honor the terms of the merger agreement, and either the employee would come back to the Texaco organization, if in fact there is an appropriate opening for him, or ultimately he would be subject to again liberal severance benefits which we have proposed in the merger agreement.

Mr. **Whittaker**. You're delineating between represented employees. Is that to mean or to suggest that those represented employees such as by unions are already assured by their union agreement of the continuation of benefits?

Mr. **Seamans**. Their employment and the result therefor are a function of their contractual agreements. In fact, we have no right to do anything other than that. Should that be changed, obviously it would require negotiation. That cannot be changed without negotiation. That is in the contractual agreement.

Senator **Kassebaum**. I understand that there is some Pester people in the audience, and I wonder if one of them could speak to their refiner's experience in buying crude oil and also what will happen to you if the Getty refinery should shutdown sometime in the future. Would anybody care to make a comment.

Pester Representative. I guess at this point we were not prepared to issue a written statement and were to file comments at a later date and in a proscribed timeframe to the FTC regarding this merger. On our ability in the past to acquire crude oil, we have obviously been successful. We are running at a rather high rate ourselves, in the 95- to 100-percent range on utilization on our crude unit.

With regards to specific issues between the Texaco/Getty merger, we have a number of arrangements between ourselves and Getty which need to be addressed individually. I think at this point we have some ownership and some common-carrier pipelines which is also in conjunction with Getty. In addition, we have arrangements on leasing pipeline facilities which go between refineries, and we also have exchange arrangements on products and utilization of their terminal facility here at El Dorado, and we have exchanges on crude oil which are on the Getty crude gathering system, which is a pipeline system. We effect transportation by use of an exchange agreement rather than shipping in that system. All of those arrangements are important to us in terms of our addressing each one individually.

The other item, and I am going from memory here, that is of the gas liquid system which travels from Conway to El Dorado. My understanding is that system is leased to Mapco Products line, Mid-America Pipeline System. That system is used to transport gas liquids to El Dorado, which Pester does in fact use as a common carrier facility. So the ability of that system to function is a matter of interest to us.

I can address any one of those issues individually. I guess the two most important issues is that of the pipelines and the terminal facilities here in El Dorado as they relate to us. We will address those at a later date. I will try to answer any questions about those if I can.

Senator KASSEBAUM. Do you own any reserves?

PESTER REPRESENTATIVE. No, we do not. We are strictly first purchase of crude oil on a lease level on a contract basis.

Senator KASSEBAUM. First purchaser, OK.

PESTER REPRESENTATIVE. Yes.

Senator KASSEBAUM. So if the refineries should shutdown here, what would you look to?

PESTER REPRESENTATIVE. I can tell you what we would have to do in terms of what we do for our customers currently. We supply products to Getty Refining & Marketing on exchange, and as a result, we acquire products from them both in Denver, and Scott City, and Great Bend and at the El Dorado refinery facility. When we do that, if this refinery were to shutdown, we then would have to make some other arrangements to acquire products in Denver for our customers and at these other locations or provide facilities that we could ship product in the Chase system direct, which we could provide product to other locations. And to find some facility to use in El Dorado or surrounding area which would be in effect because of this Getty El Dorado refining terminal. I guess the next closest one would be Wichita that we would pull product from. It would be an economic program that one would have to engage in to cover these things.

Senator KASSEBAUM. Do you have anything?

Mr. SEAMANS. Well, I would comment on some of your points, if I may. One is to the extent that Getty has any of those assets that you described, and we are talking about the crude line over and the product line back. To the extent those facilities are an asset of Getty, those are included in the schedule A divestiture items.

You have exchange agreements with Getty and you have exchange agreements simply because those exchange agreements are profitable to you and they are profitable to Getty. If they were not profitable to both parties, they would not exist. That same situation will exist with any new purchaser of the refinery. I cannot see that you would be hurt. In fact, you might be able to negotiate a better deal. I have a little trouble believing perhaps that Pester would be willing to compete with someone who had a guaranteed crude supply at a preferential price. I should think you would rather keep the markets open in that respect.

Pester Representative. At this point, I would say, you know, we are not here to object, we are only here to provide input.

Mr. Seamans. Well, I apologize.

Pester Representative. We are only here to respond to specific questions or issues. We have been advised verbally by Getty personnel about what was to be included in schedule A assets, and all of those things I think I have covered here today.

Senator Kassebaum. Thank you very much. I appreciate it. Are there any other questions from the audience?

Unidentified Speaker. I wonder if Mr. Seamans could clarify one matter, and that is in regards to the status of the refinery at the end of the 30 months. Specifically, would you be willing to keep, operate, and maintain the El Dorado refinery at its present level if a sale is not consummated at the end of 30 months?

Mr. Seamans. Well, you know, I could answer that very clearly yes except you threw in at present level. I think the point is this, Texaco for this period of time, and that can be extended, as you know, by the FTC, would be ready, willing, and able to operate these facilities. Now, we would operate them precisely as Getty would operate them, or we would operate them precisely as we operate any one of our other manufacturing facilities. The level of running at that facility is a function of the market demand, et cetera. But the point I guess you want to make, and I am ready to say, is that, yes, Texaco will continue to operate the facilities during this period of time at obviously what would in our best interests be the maximum level that we can run it. Incrementally, the most efficient system is one that runs at 100-percent capacity. Again, testimony to what this refinery can do because it is essentially running all out where many other facilities are not. So, no, we would continue to run it. We have run it at the maximum level that we could for the markets that we can have.

Senator Kassebaum. Any other questions?

Unidentified Speaker. I would really like to ask this of the Pester representative. That is what does he see happening to the crude market here in Kansas if he has to compete with the Getty refinery for available crude?

Pester Representative. I guess the best way to answer that is to say that we are currently doing that. As a result of your advice, and this may change, whether it be Getty that we compete with or a third party, it would not change what we think is our ability to acquire barrels of satisfactory type to run our facility.

Senator Kassebaum. Any others? Thank you very much. It is a pleasure to welcome a group which has worked very, very hard on the problems with El Dorado as a consequence of the Texaco/Getty merger. When Mr. Seamans mentioned community support for the business here, I can think of no finer example than has been shown by those in the community who have given days and hours of effort to working to see this remain an ongoing and viable, as has been used here much today, enterprise in the community. I think if anything can attest to the success of the refinery in El Dorado, it is the spirit that they have shown. On the part of the panel, shall we just go in this way, I think. Mayor Blake, is he going first? All right. Mayor Edward Blake.

STATEMENTS OF HON. EDWARD BLAKE, MAYOR, EL DORADO, KANS.; STEPHEN L. WAITE, CHAIRMAN, BUTLER COUNTY TASK FORCE FOR TEXACO/GETTY MERGER; JIM HAYS, PRESIDENT, LOCAL 5241, OIL, CHEMICAL & ATOMIC WORKERS; CLIFFORD W. STONE, WALNUT VALLEY STATE BANK; OTIS VAN, EL DORADO, KANS.

Mr. **Blake**. Senator Kassebaum, Representative Whittaker, and ladies, and gentlemen, it is really a pleasure to be here today in this very important function. I will give you a little bit of concerns of my own personal life in this community. I have been in it for about 39 years in business, I might add, in the business of selling gasoline, so I know a little bit about the business. But in the scope of time, whenever business gets too big and the assets take control over the owners, it is not only the right but the duty of Government to get involved. The same thing has happened in El Dorado, we have reached a point where we must depend upon the Federal Government to be our helpmate in the solutions of the many problems that go with this thing. So with that in mind, I would like to read the city statement.

Like I said, it is a pleasure and privilege to appear before you today to represent the city commission and the citizens of El Dorado. I wish to express to you the concerns about the recently announced merger of Getty Oil into Texaco. Getty has a long history in our community. We have shared in its success and look to the future with anticipation. These hopes are now in a little bit of jeopardy. The Federal Trade Commission has allowed the Texaco/Getty merger subject to certain divestitures, including the El Dorado Getty facility.

I am sure you can appreciate that many of our citizens are really concerned. The refinery is our largest employer with 525 local employees and a payroll of about $18 million. The area employment is 750 employees with a payroll of $23,600,000. But the concern is not only as employees but as merchants, residents, taxpayers, and neighbors. We wish the merger had not taken place, but we understand it is an accomplished fact. It is not our desire to undo what has happened. A sale was evident when a majority of the common stock became available. As has been expressed here, no matter how we might wish this change had not occurred, we recognize that it cannot be nullified. We wish, however, to contribute our suggestions to improve on the Texaco divestiture in our efforts to protect the workers and to insure that those who buy the Getty El Dorado refinery properties have an opportunity to be successful and profitable for the benefit to the company and its owners, but also to those who serve it through their labors or products.

In addition to the El Dorado refinery, Getty operates a number of ancillary facilities in Kansas. The sum of these facilities are necessary to the El Dorado refinery to enable it to be profitably operated. That has really been stated here today about some of these other things. They include the propane storage facilities at Conway, the natural gas gathering system, the crude oil gathering system, the Chase, Texoma, Osage, and Boyer pipelines, and the Oklahoma-Kansas portion of the Getty pipeline, as well as Cushing terminal. We recognize the need for the marketing facilities located in 13 States of the Midwest and near Western States of Colorado and Wyoming.

At the March 9, 1984, meeting in Washington, assurance was given by the legal staff of the Federal Trade Commission that the desire of the FTC is the same as ours. The Getty El Dorado facilities be sold in a manner to insure the continuation of the assets as an ongoing, viable petroleum marketing business and to remedy the lessening of competition resulting from the acquisition. We agree with the goals of the FTC, we applaud them for the inclusion in the consent order of the principle of insuring continuation of the facilities as a viable business. We thank Mr. Muris and other members of the FTC for their willingness to meet with the El Dorado representatives and their frank and open answers to our questions. However, we believe that the consent order should be modified to include additional language to assure that the intent of the FTC is carried out by Texaco and the yet unknown buyer.

It is acknowledged Mr. Jim Seamans, vice president of Texaco, has given verbal assurance of the desire of Texaco to carry out the consent order in a manner to assure the continuing operation of the facility. We agree with their goal and accept their assurance. However, we ask Texaco to agree in writing with us that the Federal Trade Commission amend the consent order to include the following. Some of these are repetitions, but I think it is really important that we realize we all feel the same about some of these things.

Texaco be required to continue to operate the facility during the period a trustee is attempting to divest the properties. The language in the order is not clear on this point. That was stated earlier, I think, by Attorney General Stephan that there is a little bit of language that is not really clear on that.

Texaco agrees to assure the availability of feedstocks, including crude oil, of at least 50,000 barrels a day necessary to operate the facilities to the purchaser in much the same as found in schedule B. That was the schedule out in California. Again, I want to say that there has been a lot of talk about that. We do not ask that a diehard contract be established between Texaco and the buyer saying they have got the buyer. We just want Texaco to say, hey, "We have some crude if you need it." We think that is going to help sell the refinery. If they will just say it and put it in writing: "We have some, we will sell it to you if you want to buy it." Not that you have to buy it, not that it binds them down.

The Conway Springs propane storage facilities, natural gas gathering system and the crude oil gathering system be included in the schedule A. I think that has been pretty well covered on that part.

Texaco provide employees with a period of time after sale to either retire or vest their pension benefits earned as Getty employees. We think it is important that Texaco after the sale to the third party have a period of time set up where the employees can go back and see whether they want to terminate with what they had with Getty or go on with the other employer. The period of time could be chosen there for that to happen.

Senator Kassebaum and Representative Whittaker, your interest in preserving the El Dorado Getty properties as an ongoing business is appreciated. We intend to petition the Federal Trade Commission for changes in the consent order as outlined above to assure that the verbal representation made to us by the various parties are carried out. We believe that these standards will provide a productive and profitable future for the new owners and preserve jobs for El Dorado citizens. Thank you very much.

Senator KASSEBAUM. Thank you. Steve Waite, who is head of the El Dorado Task Force.

Mr. WAITE. Senator Kassebaum and Representative Whittaker. The subject that we are addressing today is of great concern to the Butler County, El Dorado area and the State of Kansas. Our local concern centers in the order's requirement for Texaco to divest schedule A properties, including the Getty refinery in El Dorado.

These properties are to be divested, and I quote, "to insure the continuation of the assets as an ongoing, viable petroleum marketing business," as if we have not heard that before today. But in order to insure this goal, we feel like there are three essential areas that need to be addressed in detail in the final order issued by FTC. Here again, we are talking about the final order. There seems to be some question between the final order and amending the order we currently have at hand. We just feel these things should be addressed in the final order. They are as follows:

No. 1, that a complete and detailed list of all necessary items to the operation of the ongoing, viable business be included. Items 1, 2 and 3 of schedule A of the present order do not give adequate details and do not include all the necessary items to keep the refinery running in the present manner. Obviously, I do not have the knowledge to determine all the necessary items. However, Jim Seamans, senior vice president of Texaco, has provided me with a fairly complete list that is attached as exhibit 1[1] to this paper. He has also assured me that they recognize, and he did again today on the record, the gas gathering system and the LPG lines to the Conway underground storage as necessary to the operation of the refinery, though they are not listed in schedule A. He has assured me an adequate supply of natural gas and access to and from the caverns at Conway would be negotiated with the new owner. However, I feel the ownership of all the assets as listed, plus the Conway storage and lines and the natural gas gathering system, should be made a part of that final order of schedule A.

Second item is assurances that all the necessary contract rights and supply of feedstock be made available by order to the new owner for a definite period of time. Crude is a critical item, and I feel that Texaco should guarantee at least a 5-year supply for the El Dorado refinery at the option of the new owner. We are not talking about a giveaway here. I think it is obvious that Texaco should receive posted prices and whatever transportation costs are involved. And again, it is at the option of the owner. I see no reason the El Dorado refinery should not receive the same consideration given to the California crude users as described in schedule B of the order. Also, as reported in the March 12, 1984, Forbes magazine article, Texaco guaranteed Power Test Corp. not only gasoline but home heating oil and diesel fuel for 3 years along with the sale of 600 Getty-owned stations in 11 States. These things were not in the order, but there was a guarantee to make that. You know, there are numerous essential feedstock. We have only talked about crude and natural gas, but they are necessary to the plan. I feel they should be recognized in the order, including but not limited to the following: Crude oil, natural gas, natural gasoline, isobutane, normal butane and others. Many of these are merely contract rights that Getty has that should be transferred to the new owner.

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[1] Retained in committee files.

The third item is I feel that detailed assurances for the employees should be forthcoming immediately and be made part of the order. The refinery is simply concrete and steel, and the heart of it is the management and the employees who operate the refinery system. I understand that Texaco cannot make long-term guarantees to the employees. However, John McKinley, chairman and CEO, and Jim Seamans, senior vice president of Texaco, have commented on their concern for the employees, both verbally and in writing. I understand from reliable sources that 87 of the 500 plus employees of the plant are 55 years old and older and that many, if not all, are considering early retirement due to the uncertainty of when the retirement plan or options may change. Only general references have been made to the employees, such as McKinley's March 7 letter to Dole in which he states, "The merger agreement specifically addresses employee benefits in a detailed, protective manner." The document provides that for 2 years following the merger, Getty employees will have benefit plans which in aggregate, will be no less favorable than the current plan. I think the words, "in the aggregate," will leave a lot unanswered for those employees. Also the form 10-K for Getty Oil for 1982 states on page 48 that, "the companies generally bear the entire cost of the plan and then modify or discontinue the plans at any time." Mr. Seamans also pointed out that this 2-year period will not apply to the Getty employees at this refinery after the sale is consummated. I submit that if the 87 55-year-old and older employees, of which 30 are supervision and 50 are members of the bargaining unit, should seek early retirement due to the present uncertainty, it would be detrimental to the sale of the assets as an ongoing, viable petroleum marketing business. I would suggest that an agreement be reached to insure no change in their benefit package until such time that a sale agreement is reached and at that time give each employee a set time period, be that 1 day or 30 days, to make his decision to continue under the new agreement or retire under his old agreement without change.

You know, we have said those things are basically in there, except you can change—they have some rather lenient early retirement benefits, and you can change those and when the payments are made and still probably meet the words, "in the aggregate."

In summary, I appreciate the continued interest of our Federal and State representatives, of the FTC and the Commerce Committee in this matter. I would also like to thank Texaco and its representatives for their recent indications of their willingness to work out the details. We would submit that the comment time allowed is probably inadequate for sufficient discovery on our part, and only with the total cooperation of Texaco and/or an extension of the time limit can these items be detailed sufficiently to insure inclusion in the final consent order of a complete list of schedule A, the feedstock agreements and the employee benefit protection. Given these items, the task force of Butler County and El Dorado area would stand ready to aid in the sale and future operation of the plant with any new owner.

Senator KASSEBAUM. Thank you very much. Cliff Stone, Walnut Valley State Bank.

Mr. STONE. Senator Kassebaum, Representative Whittaker. The fabled El Dorado oil field was discovered in 1915 by a well drilled about 2 miles from where we are assembled. I have no idea how many tests for oil have subsequently been drilled in Butler County since that momentous event, but the number has to be in the thousands. I mention this only to convey the idea that we in Butler County have some idea of the risks and costs associated with prospecting for oil. Not on the scale of the $1.6 billion mukluk dry hole recently drilled in Alaska, but an idea nonetheless. Thus cannot but admire the perspicacity and daring of the folks at Texaco for more than doubling their crude oil reserves by the simple act of plunking down $10 billion to the Getty Oil Co. That these additional reserves are estimated to end up costing Texaco less than half as much per barrel as it might cost to go out and drill for them is just more proof of their business acumen. Of course, when sagacity is augmented by good luck, the combination is unbeatable. And, surely, finding an individual who apparently was discontented with the $28 million per year in dividends he was receiving from his shares in Getty and wanted to dispose of the huge block of Getty stock which he controlled, that has to be fortuitous, if not just plain downright lucky.

Now, if this were a meeting of stockbrokers, we might just all applaud and then get back to our charts and tables and try to figure out where what has been described as "merger mania" might strike next.

But this is an official hearing before the Commerce Committee of the U.S. Senate, and it seems reasonable that the reason for the existence of such a committee is for the elected representatives of the people to exercise careful vigilance over the ebb and flow of commerce throughout the land. The Federal Trade Commission has a different mandate under the law. Its mandate apparently is to be watchful against the threat of monopoly practices and other arrangements and agreements which might operate to the detriment of the comsuming public.

Parenthetically, I must add that I certainly do not envy the FTC staff persons who had to wade through their 200,000 pages of documentation on the oil industry in order to render an opinion on the Texaco takeover of Getty in the unbelievably short period of time allotted to them. I am sure they more than earned their pay on that assignment.

I do submit that the areas of concern of the Commerce Committee of the Senate necessitate that a far broader view of this and other like situations be taken than just that which encompasses such concerns as "percentage of market share," "concentration of ownership," "elimination of competition" and so forth. To say that conditions in our world today are turbulent and unsettled is of course an understatement, but it does emphasize the urgent need for our country to have within its borders as healthy, vigorous, diverse and dispersed a commercial and industrial complex as is possible.

The suggestion has been made that Congress should not legislate economic policy. There are those of us who feel that Congress has adopted innumerable items of legislation which have a direct effect on economic policy. Be that as it may, among a great many concerns in this and like situations to which the Congress should be addressing its attention is the matter of national security.

We are all aware of our Nation's heavy dependence on foreign crude oil and of the dangers of interruption in those supplies. The commitment of some $30 billion to the Strategic Petroleum Reserve in those vast caverns under the gulf coast just so we can store enough crude oil to see us through 7 months interruption in the supply of all oil from all OPEC members is one clear evidence of official concern. The commitment of $80 billion to the study and possible development of synthetic fuels is another. Surely in view of commitments of this magnitude, both in terms of money and effort, does it make any sense to permit even the possibility that "merger mania" might weaken or even obliterate the usefulness of large sectors of the petroleum producing, refining, transportation and distributing mechanisms of the great heartland of this Nation? I submit that it does not. Not from the standpoint of the economy in general, and not from the standpoint of the national security.

This is obviously an extremely broad subject, far more broad, more complex, with many more ramifications and implications than we can possibly go into in the time we have today.

Nevertheless, the clear fact remains, this is not just a matter of concern for El Dorado or Butler County; it is, as we have heard and will hear, a matter of serious concern for the whole State of Kansas, for the entire mid-continent area of the United States and, quite possibly indeed, for the Nation as a whole.

Congressman Glickman mentioned the term "good intentions" a number of times. Mr. Rowe used the phrases, "what that means to me," they assure us," "it is my understanding." Mr. Seamans repeated the term, "the spirit and intent."

Let me respectfully call the committee's attention to the March issue of the American Lawyer and the article "Getty Games." I want to quote two or three sentences concerning the negotiation. "That mix of bad lawyering, bad tactics and bad faith characterize much of the legal work done in this biggest deal ever." And then the final paragraph. "You know, says Gallant, people like Lipton keep talking about how we violated the spirit of this thing. Well, we are all lawyers and we should be concerned with the letter of the law, not the spirit."

Senator KASSEBAUM. Well, that casts somewhat of a pall on the procedure at this point. Next, Jim Hays, president, Oil, Chemical and Atomic Workers.

Mr. HAYS. I've been promoted. I am president of the Local 5241 in El Dorado, Kans. Joe Misbrener must be throwing a fit in Denver right now at headquarters. I hope he was not watching.

Senator Kassebaum and Representative Whittaker, I appreciate the opportunity to be here. I wear three different hats, I guess. I am a lifetime member of Butler County. I chose to do that a long time ago. I'm 53. I'm a 34-year employee at Skelly, Getty, Texaco, whatever refinery, and I am president of a local union and in some cases will be representing the international union in my final comments during this statement.

If the law of the land is to be observed and competition is to be preserved, certain guarantees are mandatory in order to comply with the divestiture order arranged by the FTC and Texaco.

A complete, accurate description of the schedule A assets, assets to be divested, needs to be defined. For instance, the gas gathering system and the LPG pipelines to and from Conway, Kans., which are necessary for the operation of the El Dorado Getty refinery are not listed in the schedule A assets.

For a legitimate refinery buyer, there has to be a guaranteed crude oil source for a reasonable amount of time until they can secure their own crude oil contracts.

In an early Wall Street Journal article written by Jeanne Saddler, the concept of a crude oil source for divested refineries was given serious consideration by the FTC. And I quote from that article.

> Texaco must sell a refinery in Eagle Point, N.J., as well as one in Kansas it would acquire from Getty. Texaco also will agree to divest itself of the Colorado oil pipeline and to sell the Getty gasoline stations and storage terminals it would acquire in the Northeast. *In addition, Texaco will agree to supply crude oil for the refineries it must shed.*

The emphasis is mine. The article continues:

> Antitrust experts say that the consent agreement proposed Friday by the FTC staff seems aimed at resolving what earlier trade agency studies had found to be anticompetitive problems in the refining and marketing segments of the oil industry. But some FTC Commissioners have argued that competitive problems can develop if industry mergers eliminate medium sized companies like Getty. Such concerns are more likely to supply independent retail dealers of gasoline and heating oil. These independent dealers are considered an important factor in maintaining competitive retail prices.

And I emphasize again, *a provision requiring Texaco to supply crude oil to the refineries it sheds will be aimed at that worry, sources said.*

What concerns me is that despite the concern by the FTC and if this article is accurate, their document dated February 13, 1984, is strangely silent concerning guaranteed crude oil sources to the divested refineries. There is no provision.

Texaco officials have told members of the El Dorado committee representing the concerns of this community that they do not intend to guarantee a crude oil source to a prospective buyer. If the FTC is sincerely interested in preserving competition within an industry that has experienced competitive problems, a guaranteed crude oil source for the divested refineries is a necessity. Failure to address this problem would be a breach of their obligation to consumers, this community, and the employees of the divested assets.

Further, any transaction involving the sale of the Getty/Texaco refinery must include job guarantees to current employees, recognition of the union, and an agreement by any purchaser to the terms of the articles of agreement, including benefits, just negotiated, and commencing January 8, 1984, and effective to January 8, 1986.

In general, it is good advice that if you do not have good reason to trust somebody, do not. In the case of the FTC, their failure to include guarantees for a crude oil source to the divested refineries gives me very little reason to trust them, and I do not.

I should point out that at least one member of this El Dorado committee representing this community investigated what it would require to make this refinery attractive to a legitimate purchaser, people within the industry. A guaranteed crude oil source was a primary consideration, regardless of what else had been said at this meeting.

Texaco at this time has given no indications that a crude oil source would be available to a responsible buyer. This gives me little reason to trust Texaco, and I do not. In poker terms, if Texaco wants to rake in their $10.1 billion pot, they need to ante up before this hand begins.

One needs to remember this community and this work force are unwilling participants at best, victims at the very worst, of a corporation's attempt at empire building. I presume that the FTC exists to protect our concerns also.

Unless reasonable guarantees can be made in regards to a crude oil source to a legitimate buyer, unless all schedule A assets, the proposed assets to be divested, are represented in the proposed FTC consent agreement, which would assure this community that a buyer can operate the El Dorado refinery as an ongoing competitive entity, unless assurances can be given to current refinery employees as to their continued employment, union recognition and acceptance by a purchaser of the current contract agreement, including benefits, and I do represent the internationaal union at this level at this point, let it be noted in the absence of any one of the above, that this union reserves the right to actively oppose this merger.

Senator KASSEBAUM. Thank you very much. Otis Van, Van Ford Lincoln-Mercury dealer. Welcome.

Mr. VAN. Thank you, Senator Kassebaum, Representative Whittaker. My name is Otis Van. Two years ago I sold everything I owned in my home town of Lawrence, Kans., and moved my family to El Dorado. I purchased the Ford Lincoln-Mercury dealership which was closed at the time. Through long hours and hard work, my business now employs 27 people, has a monthly payroll around $40,000, had 1983 sales in excess of $6 million and has made what I consider a noticeable contribution to this community. One of the main reasons I chose to invest in El Dorado was the stable condition of the two refineries, mainly Getty, it being the largest in Kansas.

Until recently I was secure in my decision. Now, like many others here today, I am concerned about what could happen to our area if the Getty refinery were to close. But I also have some other concerns which I hope the Commerce Committee will consider.

Butler County sent some people back to Washington, D.C., about 2 weeks ago to talk to the Federal Trade Commission representative to explain some of our fears about what could result from the Texaco/Getty takeover. Apparently our folks were told that the

FTC had no authority to consider any information, facts or opinions except for what had to do with monopoly or anticompetitive possibilities. I think something very important is being overlooked. The situation here with Getty is not that of a company that is going broke and needs to be rescued by another company or by the Federal Government. It is just very simply and plainly a case where some rich people want cash instead of stock and a case where a giant oil company wants a lot more oil and gas instead of cash.

The merchants, the schools, the workers, their families or the communities involved apparently do not count in what the Federal Trade Commission says it is supposed to consider when studying merger. If this is really true, then the Congress should very quickly change the law so the human factors are taken into consideration by the FTC. If the FTC is not willing or able to do that, then another Commission should be created by the Congress that will give some thought to people in communities. I think it is mighty strange that the Interstate Commerce Commission can take up to 31 months to decide if the Santa Fe Railroad and the Southern Pacific Railroad can merge, but the Federal Trade Commission only takes 31 days to decide if the 3d largest oil company in the United States can gobble up the 14th largest.

Today we are assembled to discuss a merger that should not have been allowed to happen, because it is obvious that those affected the most had no input into the decision. Since the decision has been made, I believe it is imperative that the people of this area know as soon as possible where we stand in regard to keeping the Getty refinery open.

In closing, I would like to say I am a member of the National Automobile Dealers Association, and I know how effective our lobbying efforts have been in protecting our industry from decisions such as this. Smaller cities like El Dorado cannot afford to have paid groups all over Washington to watch the various Federal trade boards that make rulings that can threaten the things we have all worked hard for. It is unfortunate that we should have to. Thank you.

Senator KASSEBAUM. Thank you very much. I say to you, Mr. Seamans and representatives from Texaco who were here, that you have heard some real dedicated leadership in El Dorado that is fighting hard to make sure that the refinery is preserved at full capacity.

Mr. WHITTAKER. I have no questions. I just want to take my hat off to these very, very capable, very dedicated community leaders.

Senator KASSEBAUM. I certainly do too. Thank you. The next panel consists of representatives of the oil and gas industry. Don Schnacke, Kansas Independent Oil & Gas Association, Dave Robinson, president of the National Oil Jobbers Council, who have come from Topeka and Garden City. Many have come today through snow and ice to get here. Thank you.

STATEMENTS OF DON SCHNACKE, KANSAS INDEPENDENT OIL & GAS ASSOCIATION, AND DAVID ROBINSON, NATIONAL OIL JOBBERS COUNCIL

Mr. **Schnacke**. Turnpike's clear and there is no reason for me not to be here except a bad cold I have brought along. Shall I take off?

Senator **Kassebaum**. Why don't you go ahead.

Mr. **Schnacke**. Senator Kassebaum and Congressman Whittaker, both very good friends of mine, and I am Don Schnacke, executive vice president of the Kansas Independent Oil & Gas Association. This is a 46-year-old association of Kansas independent oil and gas operators doing business in the State of Kansas.

My background is that of a licensed professional petroleum engineer with experience in refinery engineering, that as an attorney representing our association in public affairs affecting the economic, legal, and political impact of our collective membership.

I am very much encouraged and assured, reassured, frankly, from this meeting. I have sat in on all of it. I was very much impressed with the presentation of the counsel from FTC and particularly Mr. Seamans' testimony. I thought that was very helpful to all of us.

We are very much aware of the details arising around the proposed Texaco/Getty merger. We have been actively concerning ourselves with as many of the details that might affect the future market for the independent crude oil and national gas producers who have been selling to produce oil and gas gathering lines that serve the Getty El Dorado refinery.

We wish to compliment you, Senator Kassebaum and Senator Dole, Congressmen Whittaker, Glickman, Slattery, Governor Carlin, Attorney General Stephan and Senator Gaines and State Representatives Green and King, for their alertness and expressions of concern. Frankly, a real concern in Kansas when you consider the fact that there have been recent unilateral decisions by major oil companies in and nearby Kansas to shut down major refineries based entirely on independent business decisions relating to our industry and individual company economics. I am sure that I could make this comment, that we did not have any bit of this concern when Mobil and Phillips and Amoco shut down. We are interested in the concern that now arises as a result of this. We are literally beginning to lose our refinery capability in our State. It is of deep concern to us.

In this case, the Kansas economic climate is threatened by a potentially detrimental conclusion if not monitored and disciplined closely. Unlike other refinery issues in Kansas, this issue is sanctioned and authorized by an arm of the Federal Government, the Federal Trade Commission. This issue merits the genuine concern of not only our Kansas political leadership but that of the Kansas business community.

Our experience with Texaco and Getty in our close working relationship in my association is that we find these two companies have a very fine reputation of being good Kansas business entities. I personally have enjoyed a good working relationship with both companies and their assigned personnel, and therefore I feel we are dealing with good friends who have decided to merge. KIOGA has no philosophical problem with the overall merger plan in itself. When we learned that representatives of Texaco would be in the State capitol February 16, we asked for a meeting with the Texaco delegation. Mr. Frank Miller, Mr. David Yetter, Texaco, Mr. Lester Amidei and Mr. Tom Sloan of Getty met with representatives of the independent producers, along with Senator Frank Gaines, who is a member of our board of directors and executive committee as well as myself. At this meeting we expressed our concerns that we might be losing yet another major refinery and a closeby major market for crude oil and natural gas production. The Texaco representatives indicated they recognized the importance of the supporting pipelines and gathering lines that served the refinery and the need to keep the entire operation together as one entity. They assured KIOGA that the facility will continue to operate as it is presently doing, and we so advised our members throughout Kansas.

The Texaco representatives gave us a copy of the FTC merger agreement and order to review. This is the first time I had seen this order. Texaco counsel, Mr. Yetter, when examining maps, we presented, and descriptions of crude oil gathering line systems of approximately 2,500 miles in length, serving 24 Kansas counties and being used and collecting approximately 32,000 barrels of oil a day in Kansas to serve the refinery, felt that the FTC order description of the refinery, using the term "related crude oil pipelines" may be vague and not descriptive of the gathering lines that serve the refinery.

Getty natural gas gathering lines and pipelines are reported to be 87 miles in length originating over Barber and Kingman Counties and primarily there to serve the natural gas needs of the El Dorado refinery.

At this meeting the Texaco representatives did not seem to be aware of the existence of the extent of these gathering lines. We believe the FTC order should be modified to clearly define the refinery, the crude oil, the natural gas lines and gathering lines as well as product lines that serve in and out. I am assured from this meeting today that that possibly is going to happen. I hope it is.

Texaco's representative did send us recently a copy of Texaco's chairman and chief executive officer, John McKinley's, letter of March 7 to Kansas U.S. Senator Bob Dole. We felt this correspondence was again reassuring, that the El Dorado facilities will continue to operate as an ongoing refinery, transportation, and marketing entity. Frankly I look at a letter like that, when the chairman of this company speaks to the chairman of the finance committee of the U.S. Senate, it is a hardball game we are playing, and I do not believe he would be saying these things if he did not mean it. That is the way I look at this letter.

He stated:

> Kansas producers will continue to have a transportation cost advantage over more distant producers. There is no reason why they should not continue to supply the plant's crude requirements at posted prices.

His being highly confident, that is his words, that Texaco will be able to sell the refinery and the facilities that support it is reassuring, that the refinery cannot survive if any one of the important pipelines or gathering systems in and out of the refinery were separated or not included in the sale.

I might add that on the average, Kansas crude oil producers receive $1 per barrel less than Oklahoma producers. The loss of the closeby market for Kansas crude oil would only agitate the problem, particularly if the crude oil had been sold to an Oklahoma or Texas market. We suffer in that regard.

If we lose a major market like this refinery, then we would just see a deterioration of that price.

Therefore, we conclude in recommending that the order for any subsequent Texaco/Getty merger agreements include clarifying statements that will guarantee the refinery and its supporting pipelines and gathering lines be kept together as one entity for the purpose of the sale to others.

We also concur with others before us today that a Texaco commitment, and I am not too sure if I am wise enough to tell you what that commitment is, it is a choice of words and kind of an understanding that Kansas producers will continue to purchase and sell crude oil and natural gas to supply this refinery and be included in some way in this agreement. I really feel like that that message seems to be coming from Texaco. I don't understand why we cannot in some way or another address that subject.

So in conclusion, for the sake of the Kansas economy, the jobs at stake here in El Dorado and Kansas, the future of the Kansas oil and gas industry, we encourage all concerned, including Texaco and Getty management, to work toward a satisfactory solution to the continued operation of this important refining, marketing, and transportation system existing in Kansas.

Senator **Kassebaum**. Thank you very much. Mr. Robinson.

Mr. **Robinson**. Thank you, Senator Kassebaum and Representative Whittaker. My name is David Robinson, I am president of Robinson Oil Co. in Garden City, Kans. I am senior vice president of the National Oil Jobbers Council, a federation of 42 State and regional petroleum marketing associations, representing nearly 12,000 independent petroleum marketers. Collectively, these marketers account for approximately 50 percent of the gasoline and 85 percent of the heating oil sold in the United States.

I am here today to represent NOJC and the Kansas Oil Marketers Association, a member association of the National Oil Jobbers Council. Members of KOMA, of which I am one, include licensed gasoline and diesel wholesalers and retailers. Members also wholesale and/or retail a variety of other petroleum products such as LP gas, aviation fuel, kerosene, and motor oils under their own private brand or the trademark of their supplying company. I might add that I have two major suppliers that also buy from several other shippers. Eighty-five percent of the product I market comes through the Chase pipeline system into the Scott City, Kans., terminal.

I sincerely appreciate this opportunity to express our concerns about a recent wave of mergers among the major oil companies. We do indeed have some serious concerns with these megamergers and we believe they raise a number of questions, questions that have yet to be satisfactorily answered.

Perhaps our first and foremost concern is the potential impact such mergers will have on long-term competition within the petroleum industry and upon the independent petroleum marketers represented by NOJC. In our view, competition at virtually every level of the industry is clearly threatened by the oil industry mergers. Our most immediate concern, however, is the impact these mergers will have on downstream marketing, the segment of the industry in which our members are most involved and the segment which we believe to be the most competitive in the entire petroleum industry.

The FTC has evidenced by the proposed consent order that the Texaco/Getty merger appears to focus only on the competitive concerns created by the horizontal market overlaps between the two companies. The remedy of company spinoff of downstream marketing operations may solve the immediate problems posed by these horizontal overlaps. However, this remedy fails to take into consideration the continuing viability of divested downstream operations. Particularly in the oil industry, the divested units are often franchisees which are protected by other laws, the Petroleum Marketing Practices Act, for example. Divestiture without consideration of the interests and competitive viability and legal protection of these small business franchises harms them by depriving a source of supply and services. These negligent spinoffs may, in fact, create even greater competitive problems, for if these divested units sink and die after spinoff, their demise could lead to just the kind of anticompetitive situation which antitrust laws and the FTC and the Department of Justice guidelines are designed to prevent.

Moreover, the acquiring companies are playing Brer Rabbit when they are ordered, "to sell downstream marketing operations." In the Texaco/Getty example, many of the properties Texaco is being told to sell off in the Midwest are in areas in which Texaco has long since withdrawn and is no longer serving.

In essence, the competitive impacts of these mergers with the anticlimactic spinoff are threefold. First, the market served by the company being acquired, for example, Getty, loses a major competitor. Any new company which may acquire the spinoff facility is likely not to be as strong a competitor as the company it replaced, unless it too is a major integrated company.

Second, the other major integrated company still in the spinoff market is in a much stronger position. They have seen a major competitor sell to a third party which likely will not be as strong a competitor as either of the two companies involved in the merger.

Finally, the acquiring company, for example, Texaco, has greatly enhanced its position in the market because it has greatly increased its crude oil reserves for a fraction of the cost of new exploration and production and has been ordered by the Government to sell off what are generally considered the most unprofitable aspects of the acquired company.

The bottom line in such an analysis is that the major integrated companies tremendously enhance their posture in the market while virtually every independent competitor is hurt. Some people may be comfortable with the consequences of that situation. The National Oil Jobbers Council is not.

Please do not misunderstand our posture. We have long questioned the efficiencies of integration, particularly as applied to downstream marketing. We continue to believe that independent marketers are the most efficient marketers in the gasoline business. That functional efficiency, however, is rendered irrelevant if a major integrated company uses upstream crude oil profits to subsidize its downstream markets. We have alleged previously and we still believe that such subsidies exist.

With these mergers, however, fewer and fewer companies will be in positions to provide such marketing subsidies, thus putting those few companies which can in a posture to take over any market they so desire. Critics of the oil industry have for years talked of "The Seven Sisters" and the power they wield in the industry. If the mergers continue, will there be only two or three sisters or what could be left?

I would like to go on as far as the Kansas oil market is concerned and the situation here directly. Members of the Kansas Oil Marketers Association are independent fuel distributors who view the pending Texaco Getty merger with alarm. They have traditionally utilized Getty as a source and supply through the company's [illegible] refinery in El Dorado.

[illegible] product has enabled them to wholesale [illegible] across the State at substantially low prices. [illegible] turn, have been able to charge the consumer less for [illegible] diesel that he purchases. All of this has been the result of Getty's control of its own crude oil supply.

That control of crude oil also enables other refiners to make product available to independent marketers in Kansas through exchange agreements with Getty. Other refiners have had the opportunity for their customers to pick up supplies at the El Dorado refinery. This exchange system has greatly enhanced the availability of product throughout the State.

Although the Federal Trade Commission has ordered the El Dorado refinery divested, many marketers are concerned that [illegible] agreement that Texaco supply crude oil to the pur- [illegible] would have to [illegible] an [illegible] use [illegible] ge [illegible] es [illegible] mi- [illegible] The [illegible] peti- [illegible] the pump, and the State's agricultural [illegible] be equally hard hit with higher prices. Agricultural [illegible] also suffer a serious setback if the Chase pipeline, a major carrier of product to agricultural communities in western Kansas and Colorado, were to experience reduced throughout. The line extending from El Dorado westward must be maintained at its current volume to provide competitive priced product to the farmers.

Members of the Kansas Oil Marketers Association believe their concerns cited here regarding the Texaco/Getty merger and the FTC consent decree are valid concerns.

We urge the following safeguards and modifications if the consent decree for one of the largest corporate acquisitions in the history of our country is to be given final approval.

One, a guarantee that the El Dorado refinery will be offered for sale only to purchasers who will maintain its functions as a major source of petroleum products for Kansas.

Two, assurance that the purchaser of the Chase pipeline continue its operation of transported product to terminals in western Kansas and Colorado and assure that marketers receive adequate supply of competitively priced product for distribution to agricultural users.

The guarantee that there will be an adequate supply of competitively priced crude oil for maintaining the current production level at the refinery.

A request that Congress initiate hearings on the effects of major oil company mergers.

A request that Congress carefully examine the consent decree for the Texaco/Getty merger and support our concerns to the FTC. Thank you.

[The statement follows:]

STATEMENT OF DAVID ROBINSON, NATIONAL OIL JOBBERS COUNCIL

My name is David Robinson, president of Robinson Oil Company, Garden City, Kansas. I am Senior Vice President of the National Oil Jobbers Council (NOJC), a federation of 42 state and regional petroleum marketing associations, representing nearly 12,000 independent petroleum marketers. Collectively, these marketers account for approximately 50 percent of the gasoline and 85 percent of the heating oil sold in the United States.

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We sincerely appreciate this opportunity to express our concerns about the recent wave of [illegible] major oil companies. We do indeed have some serious concerns [illegible] and we believe they raise [illegible] questions [illegible]

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The [illegible] appe[illegible] over[illegible] stream [illegible] izontal [illegible] continuing viability of divested downstream operations. Particularly in the oil industry, the divested units are often franchisees which are protected by other laws, the Petroleum Marketing Practices Act, for example. Divestiture without consideration of the interests, competitive viability and legal protections of these small business franchisees harms them by depriving them of their source of supply and services. These negligent spin-offs may in fact create even greater competitive problems, for if these divested units sink and die after spin-off, their demise could lead to just the kind of anticompetitive situation which the antitrust laws and the FTC and Department of Justice guidelines are designed to prevent.

Moreover, the acquiring companies are playing "briar rabbit" when they are "ordered" to sell downstream marketing operations. In the Texaco-Getty example, many of the properties Texaco is being told to sell off in the midwest are in areas from which Texaco had long since withdrawn and is no longer serving. In the proposed Socal-Gulf merger, Socal would probably be willing to sell off even more of Gulf's refining and marketing facilities than even the FTC may require.

In essence, the competitive impacts of these mergers with the anticipated spin-offs are three-fold. First, the markets served by the company being acquired (i.e. Gulf or Getty) loses a major competitor. Any new company which may acquire those spin-off facilities is likely not to be as strong a competitor as the company it replaced, unless it too is a major integrated company.

Secondly, the other major integrated companies still in the spin-off markets are in a much stronger position. They have seen a major competitor sell to a third party which likely will not be as strong a competitor as either of the two companies involved in the merger.

Finally, the acquiring company (i.e. Texaco or Socal) has greatly enhanced its position in the market because it has greatly increased its crude oil reserves at a fraction of the cost of [illegible] production and has been ordered by the government to sell off what are generally considered the most profitable aspects of the acquired company.

The bottom line in such an analysis is that the major integrated companies tremendously enhance their posture in the market while virtually every independent competitor is hurt. Some people may be comfortable with the consequences of that situation. The National Oil Jobbers Council is not.

Please do not misunderstand our posture. We have long questioned the efficiencies of integration, particularly as applied to downstream marketing. We continue to believe that independent marketers are the most efficient marketers in the gasoline business. That functional efficiency, however, is rendered irrelevant if a major integrated company uses upstream crude oil profits to subsidize its downstream markets. We have alleged previously and we still believe that such subsidies exist.

With these mergers, however, fewer and fewer companies will be in a position to provide such marketing subsidies thus putting those few companies which can in a posture to take over any major markets they desire. Critics of the oil industry have for years talked of "The Seven Sisters" and the power they wield in the industry. If the mergers continue, will there one day be only three or four "sisters", or perhaps two? What effect would that have on competition?

Allowing these mergers could provide the clarion call for a major legislative restructuring of the petroleum industry such as crude oil divestiture.

IMPACT ON EXPLORATION AND DEVELOPMENT ON NEW RESOURCES

NOJC is also concerned that mergers involving billions of dollars cannot help but have a negative impact on exploration and production of new domestic oil resources. The Texaco-Getty, Socal-Gulf and Mobil-Superior proposed mergers would involve an expenditure of nearly $30 billion and yet would not result in a single new barrel of oil. In testimony before Congress a few years ago, one of the Hunt brothers reportedly [illegible] that "A billion dollars isn't what it used to be." [illegible] observation, but common sense would seem to [illegible] large spends billions of dollars to ac[illegible] the incentive of the acquiring com[illegible] for risky new exploration activity is diminished.

As the incentive to drill for new domestic reserves is reduced by these mergers, the dependence on unstable foreign supplies is sure to be increased. This has a negative impact on the United States' balance of payments, as well as threatening the country's national security.

THREAT OF MORE MERGERS

Any of the announced mergers, if examined separately from the others, may not raise as many questions and concerns. It would be almost akin to examining a single piece of a puzzle. Only when that piece is combined with other pieces does the true picture emerge. Thus, it is with the mergers. Three major mergers have been announced within the last 60 days. Wall Street analysts are already speculating on the companies which might be the next takeover target, and at least half a dozen companies are on that list. The mere threat of being taken over can lead a company to take actions which may not be in its own long-term best interests. The March 19 issue of Business Week magazine made the following observation: "Oil companies are under intense pressure to survive by getting bigger through acquisitions and uglier with debt—even though the rising leverage raises risks."

OTHER IMPACTS

*There are a whole range of other fac*tors to consider as part of these mergers. For example, what are the consequences of the merger on revenue to the federal government? Socal will be able to write off from its federal taxes the interest paid on the money borrowed to finance the acquisition. In addition, it will be able to depreciate and amortize the assets acquired from Gulf. Do the capital gains taxes paid by Gulf shareholders come close to offsetting that loss to the federal treasury?

What are the impacts on energy resources other than oil or gas? What do these mergers do in terms of combining other energy resources such as coal and nuclear energy?

What do these mergers mean in terms of unemployment?

What ramifications will these mergers have on small business competitive franchisee customers of the acquired company?

What are the impacts of the mergers on the state and local economies in those areas directly affected?

These are questions we cannot answer, but which we believe need to be addressed prior to any final approval of the mergers.

SUMMARY

This country has enjoyed a period of relative energy stability over the past few years, but that very stability may have led us to drop our guard somewhat. It would behoove us to remember that today's so-called "glut" can suddenly and unexpectedly become tomorrow's shortage. The recent trend to acquire oil reserves via mergers and acquisitions does not bode well for competition within the oil industry, for new exploration and development, for American consumers or for our national security.

The federal government stands to lose as well, as millions upon millions of dollars in interest and amortization costs are written off by the acquiring companies.

Perhaps the thing to keep foremost in mind is that despite the tens of billions of dollars being spent on the mergers, despite the potential threat these mega-mergers pose to competition and to national security, and despite all the other possible consequences associated with the mergers, not a single barrel of new oil will have been added to our reserve base.

At the very least, these gigantic mergers, as well as hostile takeovers, should be put on hold until some of the many questions surrounding them can be answered. The National Oil Jobbers Council strongly supports the pending proposal which calls for a six-month moratorium on mergers of the nation's 50 largest oil companies. We also believe that the FTC and Department of Justice Merger Guidelines must be expanded to include consideration of the effect on small business franchisees of merger approval mechanisms such as divestiture. Currently these guidelines are written so as to effectively preclude appropriate review of these downstream effects.

Thank you for allowing me the opportunity to express the concerns of the National Oil Jobbers Council regarding this issue of grave importance to our members marketers.

Members of the Kansas Oil Marketers Association are independent fuel distributors who view the pending Texaco-Getty merger with alarm. They have traditionally utilized Getty as a source of supply through the company's 80,000 barrel a day refinery in El Dorado.

This reliable source of product has enabled them to wholesale fuel to small retailers across the state of substantially lower prices. The retailers, in turn, have been able to charge the consumer less for the gasoline and diesel that he purchases. All of this has been the result of Getty's control of its own crude oil supply.

That control of crude has also enabled other refiners to make product available to independent marketers in Kansas through exchange agreements with Getty. Other refiners have had the opportunity for their customers to pick up supplies at the El Dorado refinery. This exchange system has greatly enhanced the availability of product throughout the state.

Although the Federal Trade Commission (FTC) has ordered the El Dorado refinery divested, many marketers are concerned that there is no requirement that Texaco supply crude oil to the purchaser of the refinery; thus, the purchasing company would have to have access to its own supply of crude. If the refinery is sold to an independent which has no crude, it is certain that prices will rise significantly in areas served by the refinery.

Furthermore, suppliers who had previously worked exchange agreements with Getty will find it necessary to resort to purchases rather than exchanges. Some will withdraw rather that pay premium prices to supply their customers in the affected areas. The result will be that independent marketers, unable to buy competitively price product, could be forced out business.

There is considerable fear among all Kansas (not just those engaged in oil marketing) that the proposed consent decree does not provide adequate assurance that the El Dorado refinery will even continue to operate. If the facility closes, hundreds of Kansas jobs will the lost—starting with the hundreds of refinery employees, followed by the indirect job losses throughout the industry: producers who depend on the refinery as a market for their crude, independent distributors, service station retailers—all of these would be casualties of the refinery closing.

The consumer would also suffer in paying higher prices at the pump, and the state's agricultural users of diesel would be equally hard hit with higher prices. Agricultural users would suffer a serious set-back if the Chase Pipeline—a major carrier of product to agricultural communities in western Kansas and Colorado—were to experience reduced throughput. The line, extending from El Dorado westward, must be maintained at its current volume to provide competitively priced product to farmers.

One final objection to the Texaco-Getty merger exists. It is our belief that the acquisition will lower Texaco's incentive for exploration and development of new oil reserves.

The members of the Kansas Oil Marketers Association believe their concerns cited here regarding the Texaco-Getty merger and the FTC consent decree are valid concerns.

We urge the following safeguards and modifications if the consent decree for one of the largest corporate acquisitions in the history of our country is to be given final approval.

1. A guarantee that the El Dorado refinery will be offered for sale only to purchasers who will maintain its function as a major source of petroleum products for Kansas.
2. Assurance that the purchaser of the Chase Pipeline (slated to be divested in the FTC consent decree) continue its operation of transportating product to terminals in western Kansas and Colorado to insure that marketers receive adequate supply of competitively priced product for distribution to agricultural users.
3. A guarantee that there will be an adequate supply of competitively priced crude oil for maintaining the current production level of the refinery.
4. A request that Congress initiate hearings on the affects of major oil company mergers.
5. A request that Congress carefully examine the consent decree for the Texaco-Getty merger and support our concerns to the FTC.

Senator KASSEBAUM. Thank you very much. Mr. Robinson, just let me ask you a brief question. Do you believe an assured supply of crude is an important part of this asset that any buyer would be looking at.

Mr. ROBINSON. My understanding is there are only two refineries connected to the Chase pipeline system, which I am directly involved in. That is the Pester refinery and the Getty refinery. And if there is any reduction in crude throughput through the refineries, it would definitely affect the end user in the area served by the pipeline.

Senator KASSEBAUM. I would also say we are holding hearings on oil mergers and the antitrust aspects of that. The hearings are being undertaken, I believe, in both the House and the Senate now.

Mr. ROBINSON. Our office in Washington has testified last week at the hearing, and they will be prepared for further testimony.

Senator **Kassebaum**. But as was stated earlier this morning, it really does not apply to the Texaco/Getty situation.

Mr. **Robinson**. I am aware of that, too. But I want to express our concern about the supply system throughout Kansas and neighboring States.

Senator **Kassebaum**. Well, you made the case very well. I think it is something that we have heard on the whole from everyone today. I am encouraged in that I do believe there have been strong messages that have been sent, and I do not believe it has fallen on deaf ears. We will be doing all we can to try and facilitate the consideration of the consent agreement. We will also do what we can in the House and Senate, particularly the work of the Commerce Committee, to assure that some of these concerns are addressed.

Mr. **Whittaker**. Thank you, Senator Kessebaum. In conclusion, I would just like to express not only my appreciation but that of the community for you chairing this hearing today. I think we have gotten a wealth of information not available before today and from sources we have not all had access to. I sincerely appreciate the opportunity to be here. I would also like to acknowledge, because so many in the room have worked with him and he has been my right-hand man on this issue, my assistant, Rob Mooney.

Senator **Kassebaum**. Thank you very much, Bob, and I would like to thank everyone who has helped make this an interesting hearing. Those who came, as I say, great distances and through some trial to appear here today and to the Butler County Community College and those people in the community who have spent the time to participate. I would also like to acknowledge staff that has worked very hard, Chuck Doyle from the Commerce Committee and Amy Bondurant from the Commerce Committee and Greg Musil of my staff. Thank you very much. We will hope that out of this hearing some very positive and fruitful results can originate. Thank you.

[Whereupon, at 2:17 p.m., the committee was recessed.]

[The following information was subsequently received for the record:]

Statement of Hon. John Carlin, Governor, State of Kansas

Senator Kassebaum, Congressman Whittaker, thank you for the opportunity to appear before this Congressional field hearing on this very important topic.

Like many elected officials in Kansas, when I first read of the Getty/Texaco merger, though I recognized that it would affect Kansas, I assumed that all that would really happen would be a name change at service stations in the State. However, after the Federal Trade Commission (FTC) filed its proposed Consent Order on February 13th, it became apparent that the Getty/Texaco merger could mean the loss of 750 jobs in the El Dorado/Wichita area with a twenty-four million dollar payroll.

Clearly, the merger of these two corporations took on a new meaning to officials in El Dorado and Kansas.

The loss of the Getty Refinery in El Dorado would have serious ramifications, not only on the City of El Dorado but on the entire State. The loss of jobs is a principal concern but there are additional concerns. For example, the Getty refinery uses 216 million kilowatt hours of electricity from Kansas Gas and Electric. During the current discussion surrounding the Wolf Creek Generating Plant and its effect on electric rates, the loss of an electric user of this size could certainly have a negative effect on rates. Additionally, the refinery uses over 35,000 gallons of Kansas crude a day and 15,000 gallons of natural gas liquids, almost all of which come from Kansas. Such a loss could be dramatic. Consequently, as elected officials, all of us must do whatever we can to ensure that the refinery continues to operate at its present capacity. That is why we are all here today, to clearly express to you our deep reservations about the possible consequences of this merger.

To date, many State officials have been actively involved in assessing the situation and its impact on Kansas. State Senator Frank Gaines, Representatives Kenny Green and Kenneth King have spent many hours on this issue, effectively representing their constituents' concerns. Additionally, Attorney General Bob Stephan has been valuable in assessing available legal procedures which may be available to the State of Kansas in stopping or modifying the merger plan.

The Attorney General has obtained Washington legal counsel and has his staff working to accumulate expertise on the subject. As the State's Chief Law Enforcement Officer, it is appropriate that the Attorney General should represent our concerns and that the State of Kansas should speak with one voice. The Attorney General has my support in his efforts to maintain the Getty Kansas properties as a viable ongoing concern. Later this morning he will describe in greater detail his recommendations for how the FTC's consent degree should be amended in order to be acceptable to Kansas. I will leave that discussion to the Attorney General.

In closing, I think that it is incumbent on all of us as elected officials to protect the interests of Kansas, not in an arbitrary or capricious way, but in a positive way which is consistent with the best interests of Kansas.

Senator, thank you for the opportunity to appear today and for your interest in this issue.

WICHITA AREA CHAMBER OF COMMERCE,
Wichita, Kans., March 19, 1984.

Hon. NANCY LANDON KASSEBAUM,
Commerce, Science, and Transportation Committee,
El Dorado, Kans.

The Wichita (KS) Area Chamber of Commerce appreciates the opportunity to provide this statement relative to the Federal Trade Commission Order file Number 8410077.

A proposed Texaco-Getty merger has numerous and far-reaching economic and social ramifications for the city of El Dorado, other area cities, the state of Kansas, and several other states.

Reappraising the significant potential impact of this issue, the Wichita Area Chamber of Commerce supports fully and stands ready to participate in any initiative to ensure that the Getty Refinery in El Dorado, along with all local and regional support facilities and associated pipelines, etc., remain a viable part of the oil and gas industry of this state; and further, that the interests of all parties in the proposed merger are fully considered prior to a final decision by the Federal Trade Commission.

Specifically, we believe the Federal Trade Commission should:

1. Extend the time period for public comment an additional sixty (60) days to provide all parties the opportunity to secure and analyze additional information related to this complex issue;
2. Require Texaco to provide a quantity of fifty thousand (50,000) barrels of crude oil per day (at market value) for a period of three (3) to five (5) years to the next owner of the Getty Refinery in El Dorado, if that owner belives it is necessary in order for the facility to be economically viable;
3. Ensure the next owner of the Getty Refinery in El Dorado (after Texaco) has access to pipelines utilized at this time and availability of adequate supplies of natural gas;
4. Provide current employees of the Getty Refinery in El Dorado with: (a) specific information on how existing pension plans and other benefit packages would be handled by Texaco in advance of the final approval of the proposed Texaco-Getty merger; or (b) establish a grace period following the sale of Getty to Texaco, which would permit those employees eligible for early retirement to either take their retirement with benefits currently guaranteed by Getty or work for Texaco under existing or new conditions.

In conclusion, we respectfully request this committee to transmit to the Federal Trade Commission the concerns expressed at this hearing through both oral and written testimony, and further, that this committee urge the Federal Trade Commission to consider fully the findings of this hearing and its deliberations leading to a final decision on the proposed merger.

Respectfully submitted,

RICHARD D. SMITH,
Chairman of the Board.

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